No. 83-1911

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IN THE

Supreme Court of the United States

October Term, 1984

CHRISTOPHER L. LOWE, LOWE PUBLISHING CORPORATION, LOWE MANAGEMENT CORPORATION and LOWE STOCK CHART SERVICE, INC.,

Petitioners,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

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JOINT APPENDIX

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Petition for Certiorari Filed May 16, 1984
Certiorari Granted October 1, 1984

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Note: The opinions rendered in the courts below are printed in the appendix to the petition for certiorari.

Relevant Docket Entries

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

DATE	PROCEEDINGS
6/ 8/82	Complaint filed. Summons issued. em(1)
6/ 8/82	Application for an OTSC, a TRO, an order freezing certain assets & records of the defs, & an order for expedited discovery, filed. em(2)
6/10/82	BEFORE WEINSTEIN, J.—Case called. Counsel for both sides present. Pltffs Order to Show Cause for TRO freezing certain assets—Argued—Denied. Pltffs order for expedited discovery GRANTED. Order to show cause signed, ret 9/13/82 @10:00 for preliminary injunction. Mag order previously signed referring case to Mag. Caden. eo—
6/11/82	BY WEINSTEIN, J.—Order dtd 6/10/82 @2:55p.m. to Show Cause ret 9/13/82 @10:00a.m. why this court should not enter a preliminary injunction enjoining the defts from making use of the mails or the means or instrumentalities of interstate commerce, etc. Filed. See order for details. eo(6)
6/11/82	Memorandum in Support of Pltffs application for a temporary Restraining order and motion for preliminary injunction, an order freezing certain assets and records of the Defts and an order expediting discovery. Filed. eo(7)
7/15/82	ANSWER of defts filed. ad(20)

DATE	PROCEEDINGS
9/13/82	Before WEINSTEIN, CH.J.—Case called. Counsel for both sides present. Non-jury trial ordered & begun. Pltff's opening. Deft's opening. Briefs to be submitted. Oral argument to be held after briefs submitted. Parties to submit findings of fact & law. Date to be set. Trial concluded. mw—
11/10/82	Before WEINSTEIN, J.—Case called; All sides present. Final argument heard on preliminary injunction & trial on the merits—specifics on record. Decision reserved. gb—
2/ 1/83	By WEINSTEIN, CH.J.—MEMORANDUM & ORDER dtd 2/1/83 that the petition for a temporary & permanent injunction pursuant to sec. 209(e) of the Advisers Act, 15 U.S.C. 80b-9(e)(1976), & the petition for an equitable order of disgorgement of monies received in the course of the business of impersonal investment advisory publication are DENIED. An injunction will issue denying defts permission to give securities information to their subscribers or potential subscribers directly or indirectly by telephone, individual letter or in person (see Order details) filed. mw(55)
2/ 3/83	CLERK'S JUDGEMENT dtd 2/2/83—Ordering that an injunction issue denying defts permission to give securities information to their subscriber or potential subscribers directly or indirectly by telephone, individual ltr or in person & that judgment is hereby entered denying petition for a temporary & permanent injunction pursuant to sec. 209(e) of the Advisers Act, 15 USC 80b-9(e) (1976) & that judgment is entered denying the

DATE	PROCEEDINGS
	petition for an equitable order of disgorgement of monies received in the course of the business of impersonal investment advisory publication & that judgment is entered enjoining defts fm giving information to their subscribers or potential subscribers directly or indirectly by telephone, individual ltr, or in person, filed. mw(56) APPROVED: JACK B. WEINSTEIN, CHIEF JUDGE.
3/ 1/83	BEFORE WEINSTEIN, J.—Case called. All sides present. Deft's Motion for an order altering or amending the judgment so as to delete therefm the final paragraph & to substitute it Argued—Denied for the reasons orally stated on the record. eo—
4/28/83	NOTICE OF APPEAL (pltff-appellant) from judgment entered 2/3/83, filed. No fees involved. C of A notified. Affidavit of service attached vw(61)
5/ 6/83	NOTICE OF CROSS-APPEAL (defts-appellants) from judgment entered 2/3/83 & oral order entered 3/1/83, filed with receipt #48513 for C of A docketing fee. C of A notified. Affidavit of service annexed. vw(63)
6/ 2/83	Clerk's certificate certified and documents delivered to C of A. Ack. requested. (copies of docket, clerk's cert. and index sent to C of A. filed. gb

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Argument Date: 09/19/83

Decision Date: 01/18/83

Petition for Rehearing Filed: 02/01/84

Petition for Rehearing Decision: DN

Decision Date: 02/21/84

Mandate Issued: 03/06/84

Cert. Filed: 05/16/84

Cert. Decision: G

Decision Date: 10/03/84

Complaint

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Filed
In Clerk's Office
U.S. District Court E.D.N.Y.
Jun 8 1982

CV 82-1616, Weinstein, J.

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

—against—

CHRISTOPHER L. LOWE a/k/a CHRIS L. LOWE, LOWE PUBLISHING CORPORATION, LOWE MANAGEMENT CORPORATION, LOWE STOCK CHART SERVICE, INC.,

Defendants.

Plaintiff Securities and Exchange Commission ("Commission") for its Complaint herein alleges that:

1. Defendants Christopher L. Lowe a/k/a Chris L. Lowe ("Lowe"), Lowe Publishing Corporation ("Lowe Publishing"), Lowe Management Corporation ("LMC") and Lowe Stock Chart Service, Inc. ("Lowe Service") have

engaged, are engaged and, unless enjoined, will continue to engage, in acts, practices and courses of business which constitute and will constitute violations of Sections 203(a), 206(1) and 206(2) of the Investment Advisers Act of 1940 ("Advisers Act"), 15 U.S.C. §§80b-3(a), 80b-6(1) and 80b-6(2).

2. Defendant Lowe has engaged, is engaged and, unless enjoined will continue to engage, in acts and practices which constitute violations of that portion of an order issued by the Commission on May 11, 1981 pursuant to Section 203(f) of the Advisers Act, 15 U.S.C. §80b-3(f).

Jurisdiction and Venue

3. The Commission brings this action pursuant to Section 209(e) of the Advisers Act, 15 U.S.C. §80b-9(e), to enjoin the defendants from engaging in such acts, practices and courses of business as are more fully described herein and for certain equitable relief.

4. This Court has jurisdiction over this action pursuant to Section 214 of the Advisers Act, 15 U.S.C. §80b-14.

5. The Defendants, directly and indirectly, have made use of the mails and the means or instrumentalities of interstate commerce in connection with the acts, practices and courses of business alleged herein, and certain of the acts, practices and courses of business alleged herein, constituting violations of the Advisers Act, have occurred and are now occurring in the Eastern District of New York.

The Defendants

6. *Christopher L. Lowe a/k/a Chris L. Lowe* is 30 years old and resides in Westfield, New Jersey. Lowe is the president of Lowe Publishing, LMC and Lowe Service. He is also the research chairman and editor of the *LIFL*, the *Lowe Stock Advisory* and the *Lowe Stock Chart Service*. On May 11, 1981, Lowe was barred from association with any investment adviser by order of the Commission. In 1982, he was convicted of larceny in New Jersey and sentenced to three years imprisonment. He currently is released on bail pending appeal.

7. *Lowe Publishing Corporation* is a Delaware corporation which maintains a post office address in Westfield, New Jersey. Lowe Publishing appears to be the publisher of the *Lowe Investment & Financial Letter* ("*LIFL*") and the *Lowe Stock Advisory*.

8. *Lowe Management Corporation*, a Delaware corporation, maintains the same post office address as Lowe Publishing. LMC also appears to publish the *LIFL* and the *Lowe Stock Advisory*. Between 1974 and 1981, LMC was an investment adviser registered with the Commission as such, and publisher of both the *LIFL* and the *Lowe Stock Advisory*. LMC's registration as an investment adviser was revoked by order of the Commission on May 11, 1981.

9. *Lowe Stock Chart Service, Inc.* maintains the same post office address as Lowe Publishing and LMC. Lowe Service is the publisher of the *Lowe Stock Chart Service*.

Facts

10. Plaintiff Commission realleges and incorporates by reference each and every allegation made in paragraphs 1 through 9.

LMC's Registration as an Investment Adviser

11. On March 29, 1974, LMC registered with the Commission as an investment adviser pursuant to Section 203(c) of the Advisers Act, 15 U.S.C. §80b-3(c).

12. From March 29, 1974 up to at least May 11, 1981, Lowe was the president, treasurer and majority stockholder of LMC.

13. During the period from March 29, 1974 up to May 11, 1981, LMC, as an investment adviser, managed the funds of advisory clients and published two investment advisory newsletters: the *LIFL* and the *Lowe Stock Advisory*.

14. Between 1974 and 1981, LMC maintained its principal business office at 26 Broadway, New York, New York and, since 1981, has maintained a business office in Westfield, New Jersey.

Lowe's New York State Criminal Convictions

15. On July 19, 1977, the grand jury of the County of New York returned a twenty-four count indictment against Lowe, charging, *inter alia*, violations of Sections 352-c and 359-eee of Article 23-A of the General Business Law of the State of New York (the anti-fraud and registration provisions).

16. On November 4, 1977, in the Supreme Court of the State of New York, Lowe pled guilty to two counts of said indictment, both misdemeanors.

17. Specifically, Lowe was convicted by his plea of guilty to:

(a) Count Twenty-Two of said indictment for representing to one of Lowe's advisory clients that Lowe had managed and invested funds of that client so that a 27% profit was earned through the purchase and sale of securities when, in fact, Lowe made no such purchase or sale but appropriated the funds of the client, in the amount of $2,200, to Lowe's own use [N.Y. Gen. Bus. Law §352-c]; and

(b) Count Twenty-Four of said indictment for failing to file as an investment advisor with the Department of Law of the State of New York, in that Lowe, for compensation, engaged in the business of advising members of the public, either directly or through publications or writings within or from the State of New York, as to the value of securities or as to the advisability of investing in, purchasing or selling or holding securities; and as part of a regular business, issued or promulgated, analysis or reports concerning securities to members of the public within or from the State of New York, without having filed as an investment adviser, as required by Section 359-eee of Article 23-A of the General Business Law of the State of New York.

18. On April 5, 1978, Lowe was sentenced to a three-year period of probation for his violation of Section 352-c of the General Business Law and an unconditional discharge for his violation of Section 359-eee of the General Business Law (Counts Twenty-two and Twenty-four of the July 19, 1977 indictment, respectively).

19. On October 20, 1978, a two count information and a twenty-two count information were filed against Lowe by the District Attorney for the County of New York.

20. On December 1, 1978, Lowe was convicted by his plea of guilty to Count Two of the two count information (Tampering with Physical Evidence); Lowe with the intent that false physical evidence be used and introduced in a pending criminal proceeding against him, produced and offered at said proceeding such evidence, knowing it to be false, in the form of a forged copy of a Western Union money order which had been altered from ten dollars to $10,000 [N.Y. Penal Law §215.40].

21. Also, on December 1, 1978, Lowe was convicted by his plea of guilty to Count Four of the twenty-two count information (Grand Larceny in the Third Degree), which charged that Lowe stole certain property owned by Manufacturers Hanover Trust Company having an aggregate value of $684.00, to wit, United States Currency. [N.Y. Penal Law §155.30].

22. On March 27, 1979, as a result of his pleas to the two informations, Lowe was sentenced to a prison term of 60 days, followed by probation of four years and ten months and ordered to make restitution in the amount of $8,227.42 at 6½% interest payable over the term of his probation.

Commission Proceedings Against Lowe and LMC

23. On October 10, 1979, the Commission instituted public administrative proceedings, pursuant to Sections 203(e) and (f) of the Advisers Act, 15 U.S.C. §§80b-3(e)

and 80b-3(f), naming LMC and Lowe as respondents and alleging that:

(a) on April 5, 1978, Lowe was convicted in the Supreme Court of the State of New York on his plea of guilty to two misdemeanors arising out of his conduct as an investment adviser to wit: Sections 352-c and 359-eee of Article 23-a of the General Business Law of the State of New York and was sentenced to three years probation;

(b) on March 27, 1979, Lowe was convicted in the Supreme Court of the State of New York on his plea of guilty to the felonies of Grand Larceny in the Third Degree and Tampering With Physical Evidence and was sentenced to a prison term of sixty days to be followed by probation of four years and ten months;

(c) since the date of Lowe's convictions on April 5, 1978 and March 27, 1979, respondent Lowe willfully aided and abetted willful violations by respondent LMC of Sections 204 and 207 of the Advisers Act and Rule 204-1(b) thereunder [15 U.S.C. §§80b-4 and 80b-7] [17 C.F.R. §275.204-1(b)], by failing to amend the negative answer to Question 16(b) of LMC's Form ADV (investment adviser registration form) [to disclose Lowe's criminal convictions];

(d) during the period from approximately June 1976 through approximately April 1978, respondent Lowe willfully aided and abetted willful violations by respondent LMC of Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§80b-6(1) and 80b-6(2)] in that LMC, aided and abetted by Lowe, by use of the mails and means of instrumentalities of interstate commerce, employed a device, scheme, or artifice to defraud LMC's clients and engaged

in transactions, practices or courses of business which operated as a fraud or deceit upon its clients concerning, among other things:

(i) the withholding of funds of advisory clients' and

(ii) the making of untrue and misleading statements concerning the return of advisory clients' funds.

24. On April 14, 1980, following a full evidentary hearing, an Administrative Law Judge rendered an initial decision *In the Matter of Lowe Management Corporation and Chris L. Lowe,* Admin. Proc. File No. 3-5823 (April 14, 1980), finding that Lowe willfully aided and abetted LMC's willful violations of Sections 204, 206(1), 206(2) and 207 of the Advisers Act, 15 U.S.C. §80b-4, 80b-6(1), 80b-6(2) and 80b-7, and Rule 204-1(b) thereunder, 17 C.F.R. §275.204-1(b), and ordering that LMC's investment adviser registration be revoked and that Lowe be barred from being associated with any investment adviser. LMC and Lowe filed a petition for review of this decision with the Commission.

25. On May 11, 1981, the Commission issued an opinion in *In the Matter of Lowe Management Corporation and Chris L. Lowe,* Admin. Proc. File No. 3-5823, finding that Lowe willfully aided and abetted LMC's willful violations of: (1) Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§80b-6(1) and 80b-6(2), in that Lowe and LMC breached their fiduciary duty to an advisory client in improperly withholding the client's funds and making misstatements concerning their return; and (2) Section 204 of the Advisers Act, 15 U.S.C. §80b-4, and Rule 204-1(b),

17 C.F.R. §275.204-1(b), thereunder, in that LMC failed to promptly amend its Form ADV (investment adviser registration form) to disclose Lowe's state criminal convictions. Investment Advisers Act Rel. No. 759 (May 11, 1981).

26. On May 11, 1981, the Commission also issued an order imposing remedial sanctions, revoking the registration of LMC as an investment adviser and barring Lowe from association with any investment adviser ("the 1981 Order"). Investment Advisers Act Rel. No. 759 (May 11, 1981).

Investment Advisory Activities Following the Commission's 1981 Order

27. On September 8, 1981, Commission staff received from a *LIFL* subscriber in Minneapolis, Minnesota, a copy of a *LIFL* "Complimentary Interim Bulletin," dated August 21, 1981, and issued three months after the 1981 Order. This *LIFL* contained general stock market information and made specific recommendations concerning money market funds.

28. The August 21, 1981 issue of *LIFL* was published by Lowe Publishing and signed by Lowe as *LIFL* research chairman and editor.

29. Also, on September 8, 1981, Commission staff received from the Minneapolis subscriber a copy of a letter from the Lowe Publishing Group advertising the *LIFL,* the *Lowe Stock Advisory* and the *Lowe Stock Chart Service,* which stated that Lowe Publishing Group is "trying to give quality advice in several investment areas (market

timing, stock selection, trading, low-priced issues, . . . mutual funds and stock charts)." The Lowe Publishing Group letter was signed by Lowe as president.

30. Also, on September 8, 1981, Commission staff received from the Minneapolis subscriber a letter addressed to *LIFL* subscribers on the letterhead of the *Lowe Stock Advisory,* offering a complimentary six-issue subscription to the *Lowe Stock Advisory,* a publication described as making recommendations of "low-priced action-packed issues."

31. A member of the Commission's staff, who resides in the Eastern District of New York and who was not a *LIFL* subscriber, completed and mailed a copy of the complimentary subscription form to the *Lowe Stock Advisory.* On or about November 23, 1981, the staff member received by mail a *Lowe Stock Advisory* "Complimentary Interim Bulletin" dated November 16, 1981. The issue contained general stock market information and specific stock recommendations and was published by LMC.

32. On or about February 23, 1982, Commission staff received from the Minneapolis *LIFL* subscriber copies of two pages of an eight-page issue of *LIFL,* dated December 11, 1981. The issue contained general stock market information and specific investment advice.

33. The December 11, 1981 *LIFL* issue was published by Lowe Publishing and listed Lowe as research chairman and editor.

34. On or about February 23, 1982, Commission staff also received from the Minneapolis subscriber a copy of

an offer and subscription form sent to *LIFL* subscribers, to renew or extend *LIFL* paid subscriptions for one, two or three years at a cost of $39, $59 and $79, respectively. The offer promised *LIFL* issues containing "specific stock recommendations" and directed that checks be made payable to Lowe Publishing.

35. The *LIFL* subscription renewal offer was signed by Lowe as research chairman and editor of the *LIFL,* the *Lowe Stock Advisory* and the *Lowe Stock Chart Service.*

36. On or about February 23, 1982, Commission staff also received from the Minneapolis subscriber a copy of an offer and subscription form, sent to *LIFL* subscribers, for an introductory five-week paid subscription to the *Lowe Stock Chart Service,* a weekly and monthly publication wherein defendant Lowe, through his corporate alter ego, Lowe Service, claims to chart the price, volume, sales and earnings of listed and unlisted stocks. The offer directed that subscription checks for the *Lowe Stock Chart Service* be made payable to Lowe Service and mailed to the Lowe Publications Subscription Service Center in Westfield, New Jersey.

37. On or about March 1, 1982, two Commission staff members, who reside in the Eastern District of New York, mailed completed copies of subscription forms, together with personal checks and cover letters, to the Lowe Publications Subscription Service Center in Westfield, New Jersey.

38. One Commission staff member mailed a check in the amount of $39.00 made payable to Lowe Publishing for a one-year subscription to the *LIFL.*

39. The other Commission staff member mailed a check in the amount of $33.00 made payable to Lowe Service for a five-week trial subscription to the *Lowe Stock Chart Service*.

40. On or about March 15, 1982, the *LIFL* subscription check, described in paragraph 38 of this Complaint, was deposited into the account of Lowe Publishing at the First Jersey National Bank, Newark, New Jersey.

41. On or about March 15, 1982, the *Lowe Stock Chart Service* subscription check, described in paragraph 39 of this Complaint, was deposited into the account of Lowe Service at the First Jersey National Bank, Newark, New Jersey.

42. On or about May 10, 1982, the Commission staff member who mailed a check to Lowe Publishing received by mail a letter on the letterhead of *LIFL*, acknowledging his subscription to the *LIFL*. According to the letter, *LIFL* subscribers could "look forward to specific recommendations regarding securities." This letter listed LMC as the publisher of the *LIFL*.

Lowe's New Jersey State Criminal Convictions

43. On October 28, 1981, a criminal indictment was returned against Lowe by a grand jury in Union County, New Jersey charging Lowe with two counts of theft by deception (third degree).

44. On January 14, 1982, Lowe was convicted by his plea of guilty to Counts One and Two of said indictment for Theft by Deception in the Third Degree, in that Lowe

knowingly and falsely represented to two New Jersey banks that various checks drawn on (a) the account of Lowe at the Escondido National Bank, Escondido, California, (b) the accounts of Lowe and Lowe Publishing at the First National State Bank, Westfield, New Jersey, and (c) the account of Lowe Publishing at the Central Jersey Bank and Trust Company, Westfield, New Jersey, were good and negotiable, when, in fact, Lowe knew said checks were not good and negotiable (N.J. Stat. Ann. §2c:20-4).

45. On February 19, 1982, following his plea of guilty, Lowe was sentenced to three years imprisonment on each count to be served concurrently. In addition, Lowe was ordered to make restitution in the amount of over $27,000 to the two New Jersey banks, according to a weekly repayment schedule. He was incarcerated at the conclusion of the sentencing hearing, but, on or about April 30, 1982, was released on bail, pending appeal.

46. The pre-sentence report filed in connection with Lowe's sentencing on February 19, 1982, and prepared by the Union County Probation Office, contained information relating to Lowe's publishing business. Lowe advised the Probation Office that he was in the publishing business and that his advisory publications have between 4,000 and 5,000 subscribers. A copy of the December 11, 1981 *LIFL* and a copy of a *Lowe Stock Chart Service* advertising flyer and subscription form were submitted to the Court at the time of Lowe's sentencing.

First Cause of Action

Violations of Section 203(a) of the Advisers Act, 15 U.S.C. §80b-3(a)—Failure to Comply With the Registration Provisions of the Advisers Act

47. Plaintiff Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 46 of this Complaint.

48. Since on or about May 11, 1981, as described in paragraphs 27 through 46 of this Complaint, defendants Lowe, Lowe Publishing, LMC and Lowe Service have been and are now, for compensation, engaged in the business of advising others, through publications, as to the advisability of investing in, purchasing, or selling securities and, for compensation and as part of a regular business, have been and are now, issuing reports concerning securities.

49. As part of the aforesaid conduct, defendants Lowe, Lowe Publishing, LMC and Lowe Service have sought and are now seeking subscribers to *LIFL* and the *Lowe Stock Stock* [*sic*] *Chart Service* through unsolicited nationwide mailings.

50. In connection with their advisory business, as described in paragraph 48 of this Complaint, defendants Lowe, Lowe Publishing, LMC and Lowe Service have been, and are now, making use of the mails and the means or instrumentalities of interstate commerce.

51. Since on or about May 11, 1981, no application for registration as an investment adviser has been filed with the Commission, or is in effect, with respect to defendants

Lowe, Lowe Publishing, LMC or Lowe Service, as required by Section 203 of the Advisers Act, 15 U.S.C. §80b-3, and no exemption from registration is available, pursuant to Section 203(b) of the Advisers Act, 15 U.S.C. §80b-3(b).

52. By reason of the foregoing, defendants Lowe, Lowe Publishing, LMC and Lowe Service have violated and aided and abetted violations of, are violating and are aiding and abetting violations of, and, unless enjoined, will continue to violate and aid and abet violations of, Section 203(a) of the Advisers Act, 15 U.S.C. §80b-3(a).

Second Cause of Action

Violations of Section 206(1) of the Advisers Act, 15 U.S.C. §80b-6(1)—Fraud in the Solicitation and Sale of Investment Advisory Publications

53. Plaintiff Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 52 of this Complaint.

54. Since on or about May 11, 1981, defendants Lowe, Lowe Publishing, LMC and Lowe Service, by use of the mails and the means or instrumentalities of interstate commerce, directly or indirectly, have been and are employing devices, schemes or artifices to defraud clients or prospective clients, in violation of Section 206(1) of the Advisers Act, 15 U.S.C. §80b-6(1).

55. As part of and in furtherance of the violative conduct described in paragraph 54 of this Complaint, defendants Lowe, Lowe Publishing, LMC and Lowe Service, in publishing investment advice and soliciting subscriptions

for the *LIFL* and the *Lowe Stock Chart Service,* knowingly made untrue statements of material fact and knowingly omitted to state facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, concerning, among other things:

(a) defendant Lowe's bar from association with any investment adviser;

(b) the revocation of defendant LMC's investment adviser registration; and

(c) defendant Lowe's New Jersey state criminal convictions.

56. Defendants Lowe, Lowe Publishing, LMC and Lowe Service knew that:

(a) Lowe was barred from association with any investment adviser by order of the Commission;

(b) LMC's registration as an investment adviser was revoked by order of the Commission; and

(c) Lowe had been convicted of two counts of theft by deception in New Jersey.

57. By reason of the foregoing, defendants Lowe, Lowe Publishing, LMC and Lowe Service have violated and aided and abetted violations of, are violating and aiding and abetting violations of, and, unless enjoined, will continue to violate and aid and abet violations of, Section 206(1) of the Advisers Act, 15 U.S.C. §80b-6(1).

Third Cause of Action

Violations of Section 206(2) of the Advisers Act, 15 U.S.C. §80b-6(2)—Fraudulent Course of Business in the Solicitation and Sale of Investment Advisory Publications

58. Plaintiff Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 57 of this Complaint.

59. Since on or about May 11, 1981, defendants Lowe, Lowe Publishing, LMC and Lowe Service, by use of the mails and the means or instrumentalities of interstate commerce, directly or indirectly, have been and are engaging in transactions, practices or courses of business which have operated and are operating as a fraud or deceit upon clients or prospective clients, in violation of Section 206(2) of the Advisers Act, 15 U.S.C. §80b-6(2).

60. As part of and in furtherance of the violative conduct described in paragraph 59 of this Complaint, defendants Lowe, Lowe Publishing, LMC and Lowe Service, in publishing investment advice and soliciting subscriptions for the *LIFL* and the *Lowe Stock Chart Service,* have made untrue statements of material fact and have omitted to state facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, concerning, among other things:

(a) defendant Lowe's bar from association with any investment adviser;

(b) the revocation of defendant LMC's investment adviser registration; and

(c) defendant Lowe's New Jersey state criminal convictions.

61. By reason of the foregoing, defendants Lowe, Lowe Publishing, LMC and Lowe Service have violated and aided and abetted violations of, are violating and are aiding and abetting violations of, and, unless enjoined, will continue to violate and aid and abet violations of, Section 206(2) of the Advisers Act, 15 U.S.C. §80b-6(2).

Fourth Cause of Action

Violations of a Commission Order Imposing Remedial Sanctions—Enforcing Compliance Pursuant to Section 209(e) of the Advisers Act, 15 U.S.C. §80b-9(e)

62. Plaintiff Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 61 of this Complaint.

63. Since on or about May 11, 1981, defendant Lowe has been associated with, is associated with and, unless enjoined, will continue to associate with, an investment adviser in violation of an Order issued by the Commission on May 11, 1981, which bars Lowe from association with any investment adviser.

64. From on or about May 11, 1981 to the present, as described in paragraphs 27 through 46 of this Complaint, defendant Lowe has acted in the capacity of officer or director of (or performed similar functions), has directly or indirectly controlled, or has been an employee of, defendants Lowe Publishing, LMC and Lowe Service.

65. By reason of the foregoing, defendant Lowe has violated and is violating that portion of an order issued

by the Commission on May 11, 1981 pursuant to Section 203(f) of the Advisers Act, 15 U.S.C. §80b-3(f).

WHEREFORE, plaintiff Commission respectfully requests that this Court issue:

A. A Temporary Restraining Order, an Order of Preliminary Injunction and a Final Judgment of Permanent Injunction enjoining defendants Lowe, Lowe Publishing, LMC and Lowe Service, their affiliates, nominees, agents, officers, employees, servants, successors, attorneys, assigns, and those persons in active concert or participation with them, and each of them, directly or indirectly, by use of the mails or the means or instrumentalities of interstate commerce, for compensation:

(1) from engaging in the business of advising others, directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; or

(2) as part of a regular business, from issuing or promulgating analyses or reports concerning securities;

in violation of Section 203(a) of the Advisers Act, 15 U.S.C. §80b-3(a).

B. An Order of Preliminary Injunction and a Final Judgment of Permanent Injunction enjoining defendants Lowe, Lowe Publishing, LMC and Lowe Service, their affiliates, nominees, agents, officers, employees, servants, successors, attorneys, assigns, and those persons in active concert or participation with them, and each of them,

directly or indirectly, by use of the mails or the means or instrumentalities of interstate commerce, from:

(1) employing any device, scheme or artifice to defraud any client or prospective client; or

(2) engaging in any transaction, practice or course of business which operates as a fraud or deceit upon any client or prospective client;

in violation of Sections 206(1) and 206(2) of the Advisers Act, 15 U.S.C. §§80b-6(1) and 80b-6(2).

C. An Order of Preliminary Injunction and a Final Judgment of Permanent Injunction, pursuant to Section 209(e) of the Advisers Act, 15 U.S.C. §80b-9(e), enforcing compliance with an Order issued by the Commission on May 11, 1981, enjoining defendant Lowe from association with any investment adviser.

Plaintiff Commission further requests that this Court issue:

A. An Order directing defendants Lowe, Lowe Publishing, LMC and Lowe Service to disgorge all monies or proceeds received by them in connection with their investment advisory business since May 11, 1981.

B. An Order appointing an Escrow Agent to oversee disgorgement and, pursuant to a plan submitted by such Escrow Agent and approved by the Court, to distribute the disgorged monies or proceeds to all subscribers to defendants' investment advisory publications and whose compensation and other expenses shall be borne by the defendants and not deducted from any of those assets subject to disgorgement.

C. An Order restraining defendants Lowe, Lowe Publishing, LMC and Lowe Service, and each of them, their affiliates, nominees, agents, officers, employees, servants, successors, attorneys, assigns and those persons in active concert or participation with them, and each of them, from:

(1) transferring, pledging, assigning, dissipating, concealing or otherwise disposing of any assets, funds or other property presently held or owned by them or under their control; and

(2) destroying, mutilating, concealing, altering or disposing of any items, including, but not limited to, any books, records, documents, contracts, agreements, assignments, obligations, subscription lists, subscription order forms, correspondence or other property of the defendants herein;

until a plan of disgorgement is submitted to, and approved by, the Court.

D. An Order commanding defendants Lowe, Lowe Publishing, LMC and Lowe Service, within seven days from the date of entry of the Final Judgment and Order of Disgorgement, to file affidavits with the Court and Escrow Agent: (i) itemizing all of their assets, liabilities and business records; (ii) disclosing the location of those assets, liabilities and business records; and (iii) listing the names and addresses of each subscriber to the *LILF*, the *Lowe Stock Advisory* and the *Lowe Stock Chart Service* and the amount of subscription fees paid by each subscriber.

E. Such other and further relief as this Court may deem necessary and proper.

Respectfully submitted,

/s/ Donald N. Malawsky

Donald N. Malawsky
Regional Administrator

Attorney for Plaintiff
Securities and Exchange Commission
26 Federal Plaza
New York, New York 10278
Telephone: (212) 264-1636

Of Counsel:

Lawrence J. Toscano
Charles E. Padgett
S. Jane Rose
Thomas R. Hickey, Jr.

Answer

UNITED STATES DISTRICT COURT

Eastern District of New York

82 Civ. 1616 (JBW)

Securities and Exchange Comission,

Plaintiff,

against

Christopher L. Lowe
a/k/a Chris L. Lowe
Lowe Publishing Corporation
Lowe Management Corporation
Lowe Stock Chart Service, Inc.,

Defendants.

The defendants answer the complaint as follows:

1. Deny each and every allegation of paragraphs 1, 2, 4, 5, 52, 54, 55, 57, 59, 60, 61, 63 and 65.

2. Deny knowledge or information sufficient to form a belief as to the allegations of paragraphs 27, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41 and 42.

3. Deny each and every allegation of paragraph 3 to the extent it alleges that the Commission has legal authority to bring or maintain this action.

4. Deny each and every allegation of paragraph 6 to the extent it alleges that Lowe resides in Westfield, New Jersey, was barred from association with any investment advisor by order of the Commission or was convicted of larceny in New Jersey.

5. Deny each and every allegation of the first sentence of paragraph 7.

6. Deny each and every allegation of paragraph 13 except to the extent it alleges that prior to a date, not yet determined, in 1976 LMC managed funds of one or more clients and that during the alleged period, it published two publications, LIFL and Lowe Stock Advisory.

7. Deny each and every allegation of paragraph 14 to the extent it alleges that since 1981 LMC has maintained a business office in Westfield, New Jersey.

8. Deny each and every allegation of paragraph 28 except to the extent it alleges that an issue of LIFL dated August 21, 1981 was published by Lowe Publishing.

9. Deny each and every allegation of paragraph 33 except to the extent it alleges an issue of LIFL dated December 11, 1981 was published by Lowe Publishing and listed Lowe as research chairman and editor.

10. Deny knowledge or information sufficient to form a belief as to the allegations of paragraph 48 except deny that the defendants engaged in the alleged business of advising others, as described in paragraphs 44, 45 and 46.

11. Deny each and every allegation of paragraph 49 except to the extent it alleges that Lowe, Lowe Publishing and

LMC have sought and are now seeking subscribers to LIFL and that Lowe and Lowe Stock Chart Service have sought subscribers to the Lowe Stock Chart Services through nationwide mailings.

12. Deny each and every allegation of paragraph 50 except to the extent that the defendants have been, and are now, making use of the mails and the means or instrumentalities of interstate commerce.

13. Deny each and every allegation of paragraph 51 except to the extent it alleges that since on or about May 11, 1981, no application for registration as an investment advisor has been filed with the Commission or is in effect with respect to Lowe, Lowe Publishing, LMC or Lowe Service.

14. Deny each and every allegation of paragraph 56 except to the extent it alleges that the defendants knew the matters alleged in subparagraphs (b) and (c).

15. As to the allegations of paragraphs 10, 47, 53, 58 and 62, repeat paragraphs 1 through 14 hereof.

First Affirmative Defense

16. The defendants are publishers of bona fide business and financial publications of general and regular circulation and are thereby excluded from regulation by the definition of "investment adviser" set forth in §202(a)(11) of the Investment Advisers Act.

Second Affirmative Defense

17. The Investment Advisers Act sets forth unjustifiable and irrational exclusions from regulation in the definition

of "investment adviser" set forth in §202(a)(11)(D) thereof and thereby unjustifiably discriminates against defendants and deprives them of liberty and property without due process of law under the Fifth Amendment.

Third Affirmative Defense

18. The Investment Advisers Act, as sought to be applied to the defendants, and the relief sought in the complaint, violate the defendants' First Amendment rights of free press and free speech.

Fourth Affirmative Defense

19. The Investment Advisers Act, on its face, violates the First Amendment rights of free press and free speech of publishers of financial newsletters by, among other things, requiring licensing of such publishers in advance of publication.

WHEREFORE, the defendants demand that the complaint be dismissed, with costs.

Dated: New York, New York
July 8, 1982

SCHOEMAN, MARSH, UPDIKE & WELT
Attorneys for the Defendants
60 East 42nd Street
New York, New York 10165
(212) 661-5030

To:

DONALD N. MALAWSKY, ESQ.
Attorneys for Plaintiff
Securities and Exchange Commission
26 Federal Plaza
New York, New York 10278

Stipulation

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

82 Civ. 1616 (JBW)

SECURITIES AND EXCHANGE COMISSION,
Plaintiff,

against

CHRISTOPHER L. LOWE
a/k/a CHRIS L. LOWE
LOWE PUBLISHING CORPORATION
LOWE MANAGEMENT CORPORATION
LOWE STOCK CHART SERVICE, INC.,
Defendants.

IT IS HEREBY STIPULATED AND AGREED by and between counsel for the respective parties that the defendants hereby admit for purposes of this action, pursuant to FRCP 36, as follows:

1. The Lowe Investment and Financial Letter ("LIFL"), has approximately 2,408 paid subscribers holding subscriptions whose terms vary between 3 months and at least 3 years and approximately 2,448 subscribers whose subscriptions have expired, but who continue to receive LIFL.

2. Copies of all issues of LIFL distributed in the period from May 11, 1981 to date have been furnished to the plaintiff.

3. Each issue was distributed on or about the date of such issue.

4. The LIFL issue distributed in August 1981 was mailed to approximately 3,300 persons; the issue distributed December 11, 1981 was mailed to approximately 19,000 persons; subsequent issues were mailed to between 4,500 and 5,000 persons.

5. The Lowe Stock Advisory ("LSA") has approximately 278 paid subscribers and approximately 397 subscribers who have not paid.

6. Copies of all issues of LSA distributed in the period from May 11, 1981 to date have been furnished to plaintiff.

7. Each issue was distributed on or about the date of such issue.

8. Each LSA issue has been mailed to between 400 and 700 persons.

9. The Lowe Stock Chart Service ("LSCS") has approximately 44 paid subscribers.

10. Since June 8, 1982, 9 LSCS subscriptions were refunded of which 4 were converted by the subscribers to LIFL subscriptions.

11. In the period from May 11, 1981 to date, no issues of LSCS have been distributed.

12. Each corporate defendant makes use of the mails and instrumentalities of commerce in connection with the solicitation of its subscribers and, except in the case of Lowe Stock Chart Service Inc. makes use of the mails and instrumentalities of commerce in connection with the distribution of materials.

13. None of the defendants has told any paid subscribers of the existence of the plaintiff's order of May 11, 1981 or the terms thereof or of the convictions of defendant Chris L. Lowe alleged in the complaint, except that the defendants have informed not more than 20 other newsletter publishers (who may or may not be paid subscribers) of such facts.

IT IS FURTHER STIPULATED AND AGREED by and between counsel for the respective parties as follows:

A. On or before Tuesday, August 24, 1982, the corporate defendants will furnish plaintiff with the names of a total of 75 additional paid subscribers in the New York area whose names have not previously been furnished by them, (including subscribers for each publication in the appropriate ratios of the total paid subscribers for each publication, to the extent practicable).

B. Plaintiff's motion to compel discovery shall be withdrawn forthwith.

Dated: New York, New York
August 20, 1982

SCHOEMAN, MARSH, UPDIKE & WELT

By /s/ MICHAEL E. SCHOEMAN

Attorneys for defendants
60 East 42nd Street
New York, New York 10165

/s/ S. JANE ROSE

S. JANE ROSE
Attorney for Securities and
Exchange Commission
26 Federal Plaza
New York, New York 10278

Transcript of Trial

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

CV 82 1616

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

against

CHRISTOPHER L. LOWE, *et al.*

Defendant.

United States Courthouse
Brooklyn, New York
September 13, 1982
10:00 A.M.

Before:

HONORABLE JACK B. WEINSTEIN, CHIEF U.S.D.J.

• • •

[23]
The Court: All right.
Call your witness.
Ms. Rose: The Government calls as its first witness, Richard Mayer.

The Court: This is Government's Number 1 to 40 in Evidence; right?

Ms. Rose: Yes.

[24] RICHARD A. MAYER, a witness called herein, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

Direct Examination by Ms. Rose:

Q. Good afternoon, Mr. Mayer.

Would you tell the Court what is your address, sir?

A. My address?

It is 2800 Gerard Avenue South, Apartment 110, Minneapolis, Minnesota, 55408.

Q. How are you employed, Mr. Mayer?

A. I am retired.

Q. How were you employed, sir?

A. I previously was an electrical contractor.

Q. Have you ever heard of the Lowe Investment and Financial Letter?

A. Yes, I have.

Q. Can you tell us what is the Lowe Investment and Financial Letter?

A. It is an investment advisory service to help people with their investments, to guide them through and select the proper securities for investment.

[25] Q. When did you first hear of the Lowe Investment and Financial Letter?

A. In February of 1979.

Q. Can you tell us under what circumstances you first heard of the Lowe Investment and Financial Letter?

A. I received a letter from the Lowe Management Corporation notifying me that they had purchased the rights to a subscription that I had with the Wall Street Advisor.

They had been selected to take over that subscription and they were going to continue the rest of the subscription and add three additional months as an inducement to remain.

Q. Did you ever receive the Lowe Investment and Financial Letter?

Mr. Schoeman: Your Honor, I will object to this. The complaint starts with May 1981.

I don't know why we are going two years earlier than that. It seems to be improper.

The Court: Overruled, I will hear it.

Q. When did you first receive the Lowe Investment and Financial Letter?

A. I received the first issue in March 1979.

Q. Did you ever have occasion to extend your subscription to the Lowe Investment and Financial Letter, [26] Mr. Mayer?

A. Yes. They made a number of offers to add to the subscription that they had taken over.

I subsequently renewed.

Q. When did you renew your subscription?

A. I renewed my subscription in August of 1979.

Q. Can you tell us what the terms of that subscription were?

A. The subscription was for three years at twice a month for $75.

Q. Are you currently a subscriber to the Lowe Investment and Financial Letter?

A. Well, I have a large amount of my unexpired term due me.

Q. Can you tell us, Mr. Mayer, for what purpose did you subscribe to the Lowe Investment and Financial Letter?

A. I subscribed to the letter to receive the advice that I needed for investments.

Q. Do you invest in securities, sir?

A. Yes, I do.

Q. Have you ever purchased any securities which were recommended by the Lowe Investment and Financial Letter?

A. No, I didn't because the letter was very [27] sporadic and delivery was undependable and I couldn't form opinions because of the inconsistencies of delivery.

Q. Can you tell us, sir, whether you have received any issues of the Lowe Investment and Financial Letter since May of 1981?

A. Yes, I have.

Q. Can you tell me, sir, how many issues of the Lowe Investment and Financial Letter did you receive in 1981 after May 11th?

A. I received one complimentary interim bulletin and one regular advisory letter.

Q. Do you recall when you received those issues, sir?

A. Yes.

I received the complimentary bulletin in August of '81, and the regular advisory letter in December '81.

Q. Mr. Mayer, I would like to show you Government's Exhibit 7 and 8 in Evidence.

Do you recognize Government's Exhibit 7 and 8, Mr. Mayer?

(Witness examining document.)

A. Yes, I do.

Q. Have you seen them before?

[28] A. Yes, these are copies of the ones that I received.

Q. Are those copies of the issues of the Lowe Investment and Financial Letter that you received in 1981, sir?

A. Yes, they are.

[29] Q. Can you tell us, sir, how many issues of the Lowe Investment and Financial Letter you have received in 1982?

A. I received approximately—in May a notification that publication would resume and subsequently starting in June '82, I received a total of 5 regular market letters.

Q. Did you receive any market letters between December of 1981 and June of 1982?

A. No.

Q. Mr. Mayer, I now show you 5 documents which are Government's Exhibits 9, 10, 11, 12, and 13 in Evidence.

Do you recognize those documents, sir?

(Witness examining documents.)

A. Yes, I do.

Q. Can you tell us what they are?

A. These are the regular market advisory letters published by the Lowe Investment and Financial Letter, the Lowe Stock Advisory Corporation.

Q. Are those copies of the letters, sir, that you received from the Lowe Investment and Financial Letter?

A. Yes.

Q. Can you tell us when you received those issues?

A. I received them in June and July and August of [30] this year, 1982.

Q. How did you receive them, sir?

A. By mail.

Q. Mr. Mayer, have you ever heard of the Lowe Stock Advisory?

A. Yes, I have.

Q. Can you tell us what the Lowe Stock Advisory is?

A. It is an advisory service which supposedly recommends low-price stocks to investors.

Q. How did you first hear of the Lowe Stock Advisory?

A. I received several subscription offers in the mail with my regular advisory letter.

Q. Did you ever subscribe to the Lowe Stock Advisory?

A. Yes.

I received an offer for a free six-issue subscription in late-summer of '81.

Q. I will show you what has been marked as Government's Exhibit 15 which is in evidence.

Have you seen Government's Exhibit 15 before today?

(Witness examining document.)

[31] A. Yes, I have.

This is the free six-issue trial subscription offer that I received and I sent in the coupon to receive the free trial.

Q. Did you send a copy of the Government Exhibit 15 to the plaintiff Commission?

A. Yes.

Q. Have you received any other solicitations from those stock advisories, sir, other than Government's Exhibit 15?

A. Yes, earlier than that I received several subscription offers.

Q. Did you ever receive any issue of the Lowe Stock Advisory?

A. In November of '81, I received a complimentary interim bulletin.

Q. I show you, sir, Government's Exhibit 19 in Evidence.

Do you recognize that document, sir?

(Witness examining document.)

A. I do.

Q. Can you tell us what it is?

A. This is a complimentary interim bulletin of the Lowe Stock Advisory.

[32] Q. Have you seen that bulletin prior to today?

A. Yes.

Q. Is that a copy of the bulletin that you received from the Lowe Stock Advisory?

A. Yes, it is.

Q. Can you tell us when you received it?

A. I received in November, shortly after the date on this advisory.

Q. Is that November of 1981?

A. November 16, 1981, is the date on this advisory.

Q. Thank you.

Mr. Mayer, do you recall receiving any other solicitations from Lowe Stock Advisory?

A. In July of 1982, I received a notification that the publication and the Lowe Stock Advisory was going to resume an offering to recommend or offer extensions to the subscription.

Q. I show you Government's Exhibit 39 in Evidence, sir.

Have you seen that document prior to my handing it to you?

(Witness examining document.)

A. Yes, I have.

[33] Q. Can you tell us what is it.

A. It is an announcement by the Lowe Stock Advisory that they would resume publication of the Lowe Stock Advisory effective with the 8th of July, 1982 issue.

Q. When did you first see that document?

A. I saw it shortly after the date shown here in July 1982.

Q. Have you ever heard of the Lowe Stock Chart Service?

A. Yes, I have.

Q. Can you tell us what the Lowe Stock Chart Service is?

A. The Lowe Stock Chart Service is a publication with a considerable number of charts in it of the stocks on the New York Stock Exchange and the American Stock Exchange and some over-the-counter stocks.

Q. Can you tell us, sir, under what circumstances you first heard of the Lowe Stock Chart Service?

A. I had some subscription offers included with the regular advisory service I was getting.

These were about late-1980 and early-1981.

Q. I show you Government's Exhibit 20 in Evidence.

Have you seen that document prior to my handing it to you?

[34] (Witness examining document.)

A. Yes.

Q. Would you tell us what it is?

A. This is an offer for a subscription to the Lowe Stock Chart Service.

Q. When did you first see that document?

A. Late-1980.

Q. Mr. Mayer, did you ever purchase a subscription to the Lowe Stock Advisory?

A. No, I didn't.

Q. For what reason did you not purchase a subscription to the Lowe Stock Advisory?

Mr. Shoeman: Objection.

The Court: I will permit it.

You may answer.

A. Because the delivery of the publications from Lowe Management Corporation was very undependable and because I hadn't gotten the market letters that I expected as regularly as they should have been and I did not want to pour good money after bad because I still hadn't gotten a complete fulfillment of my subscription to the Lowe Investment and Financial Letter.

Q. Mr. Mayer, do you know if Lowe Management Corporation was ever registered with the Securities and [35] Exchange Commission as an investment advisor?

A. Yes.

Q. How did you learn that Lowe Management Corporation was registered with the Securities and Exchange Commission as an investment advisor?

A. Because in the very first letter that I received from them, at the top of the letter they said, "Investment Advisors" and on the publication they sent, at the bottom it said "Registered Investment Advisor".

Q. Sir, were you ever informed that the investment advisor registration of Lowe Management Corporation was revoked by order of the Securities and Exchange Commission in May of 1981?

A. Notified by whom?

Q. Were you notified by anybody that the registration of Lowe Management Corporation, as an investment advisor, was revoked?

A. I wasn't automatically notified. I wrote to the Securities and Exchange Commission to find out what was going on with the firm and they notified me then that his license had been revoked.

Q. Did Lowe Management Corporation, Mr. Lowe, Lowe Publishing Corporation or Lowe Stock Chart Service or the Lowe Investment and Financial Letter or Lowe Stock [36] Advisory ever inform you, sir, that the registration of Lowe Management Corporation, as an investment advisor, was revoked by the Securities and Exchange Commission's order?

A. Never.

Q. Would the revocation of Lowe Management Corporation, registration as an investment advisor, had been a fact which you would have considered in deciding whether or not to subscribe to the Lowe Investment and Financial Letter, the Lowe Stock Advisory or the Lowe Stock Chart Service?

Mr. Schoeman: I object, your Honor, as leading.

The Court: I will permit it.

A. Yes, it would have influenced my decision.

Q. Were you ever informed, sir, by any of the defendants in this action or by any of their publications, that is by the Lowe Investment and Financial Letter, the Lowe Stock Advisory or the Lowe Stock Chart Service that in May of 1981 the Commission issued an order which barred Christopher Lowe from being associated with any investment advisor?

A. Never.

Q. Would the fact that the Commission had issued [37] such an order have been something you would have wanted to consider in deciding whether or not to subscribe to Lowe Investment and Financial Letter, the Lowe Stock Advisory, or the Lowe Stock Chart Service?

A. Yes.

Mr. Schoeman: Same objection, your Honor.

The Court: I will permit it.

A. Yes, it would.

Q. Were you ever informed, Mr. Mayer, by the defendants or by the Lowe Investment and Financial Letter, the Lowe Stock Advisory or the Lowe Stock Chart Service that Christopher Lowe was convicted in New Jersey of two counts of theft by deception in 1982?

A. No.

Q. Would the fact of Mr. Lowe's convictions have been a factor you would have wished to take into account in deciding whether or not to subscribe to the Lowe Stock Advisory or the Lowe Investment and Financial Letter?

Mr. Schoeman: Same objection, your Honor.

The Court: Overruled.

A. Yes.

Q. Would you had subscribed to the Lowe Investment and Financial Letter or the Lowe Stock Advisory had you [38] been informed of Mr. Lowe's conviction?

A. No.

I would not have subscribed.

Ms. McKenzie [*sic*]: I have no further questions of Mr. Mayer.

(Pause)

[39] *Cross-examination by Mr. Schoeman:*

Q. Mr. Mayer, is it correct that you sent at least one letter to the Commission?

A. Yes, I did.

Q. How many did you send to the Commisison?

A. Altogether?

Q. Yes.

A. Two, I believe.

Q. Did those letters describe in any way your dealings with any of the defendants?

A. Yes.

Mr. Schoeman: Your Honor, we would like production of those letters under 3500, the Jencks Act.

The Court: Well, it is not exactly a 3500 material problem, but do you have the letters?

Ms. Rose: I have no problems with providing the letters. We did give Mr. Schoeman some documents today. I think these were inadvertently missing.

Mr. Schoeman: I have them right here, your Honor.

The Court: Have they been marked for identification?

[40] Ms. Rose: No, sir.

The Court: All right, why don't you mark the whole folder for identification as a Defendant's Exhibit.

Mr. Schoeman: May I just have a minute to read it, your Honor?

The Court: Yes. Had you used any numbers for the Defendant's Exhibits yet?

Mr. Schoeman: Well, this would be A, your Honor.

The Court: This is A.

How long are you going to be because I can do a little work in chambers if you are going to be long.

Mr. Schoeman: Sir, is that addressed to me?
The Court: How long will you be?
Mr. Schoeman: On cross?
The Court: No, on the file.
Mr. Schoeman: Well, I read the first three pages, Judge. There are another 15 or so.
The Court: All right, we will take a five minute recess so I can get some work done.
(Whereupon, a recess was taken.)

[41] *Cross-examination by Mr. Schoeman*: (Continued)

Q. Mr. Mayer, you subscribe to a number of other financial newsletters; do you not?
A. Yes, I do.
Q. About 15 or 16 of them?
A. Yes.
Q. Do you like the quality of the Lowe Investment Financial Letters that you received?

Ms. Rose: Objection.
The Court: Overruled.

A. At first I did.
Q. What did you like about them at first?
A. I liked his reporting of the stock market behavior. I liked the market indicator charts that he included for a period of time and I was beginning to get acquainted with the service until it became sporadic and inconsistent deliveries.
Q. Looking at Exhibit 9 through 13, did you like those?

(Witness examining document.)

A. I didn't read these letters. I disregarded them because of the inconsistent delivery. I was unable to use them for a basis to make decisions for investment so [42] I never read these letters.
Q. If you were to continue to receive letters on a regular basis, would you read them, that is, the Lowe letters?

A. Yes, that's why I subscribed to investment advisory letters.
Q. Would you like to continue to receive them?
A. If they were delivered on a regular basis and if I got the rest of my subscription, I would if he were a registered investment advisor.
Q. With respect to the one qualification you have made, if he were a registered investment advisor, is it your assumption in making that condition that the Commission has the power to prevent someone from publishing a newsletter if he is not registered?
A. Yes.

Mr. Schoeman: No further questions.
The Court: All right, next witness please.
Thank you, you can go back home, sir.
Ms. Rose: The Government calls Thomas Biolsi.

THOMAS ANTHONY BIOLSI, called as a witness, having been first duly sworn by the Clerk of the Court, testified as follows:

[43] *Direct Examination by Mr. Hickey:*

Q. Good afternoon, Mr. Biolsi.
What is your home address, please?
A. My home address is 88-597 16th Avenue, Brooklyn, New York.

The Court: I thought you said you had two witnesses from out of town?
Ms. Rose: Mr. Biolsi has to testify at a trial in Michigan tomorrow.
The Court: Well, you better be prompt because you only have 35 minutes direct and cross.
Ms. Rose: The other witnesses are residents of the Greater New York area, your Honor.
The Court: All right.

Q. Mr. Biolsi, how are you employed?

A. I am a securities compliance examiner in the branch of Investment Advisor Examinations assigned to the New York office of the United States Security and Exchange Commission.

Q. Have you ever heard of the Lowe Investment and Financial Letter?

A. Yes, I did.

Q. Under what circumstances did you first hear [44] of the Lowe Investment and Financial Letter?

A. In February of this year I was asked by my superiors to subscribe to the Lowe Investment and Financial Letter to which I did for which I was reimbursed the $39 fee for the subscription by the Commission.

Q. But what reason were you asked to subscribe to the Lowe Investment and Financial Letter?

A. I was asked to subscribe to see if Mr. Lowe was still conducting business as an investment advisor after his bar that the Commission had placed against him back in 1981.

Q. Did you ever subscribe to the Lowe Investment and Financial Letter?

A. Yes, I did. In March of this year I sent away a copy of the subscription form along with a letter, along with a check from my own personal checking account for $39 for a one year subscription to the Lowe Investment and Financial Letter.

Q. Mr. Biolsi, I show you now what has been marked as Government's Exhibit 14 in evidence.

I ask you if you recognize that document, sir?

(Witness examining document.)

A. Yes, this is the subscription blank of which [45] we made the copy and filled it out and sent it in as part of my subscription to the Lowe Investment and Financial Letter.

Q. Mr. Biolsi, I show you now a document which has been marked as Government's Exhibit 22 in evidence and ask you if you recognize that?

(Witness examining document.)

A. Yes, I do.

This is the February 28, 1982 letter that I wrote up and sent along with my subscription blank and my check to the Lowe Investment and Financial Letter.

Q. Mr. Biolsi, I now show you Government's Exhibits 23 and 24 and ask you if you recognize those documents?

(Witness examining documents.)

A. Yes, I do.

This is a copy of my subscription blank that was sent to the Lowe Investment and Financial Letter in March of 1982 along with my check made out to Lowe Publishing Company for $39.

Q. What is the date of that check, sir?

A. March 2, 1982.

Q. Mr. Biolsi, I ask you to look at Government's Exhibit 24 in evidence.

[46] Are there any other markings on that particular exhibit other than those that are made by your own hand?

(Witness examining document.)

A. Yes, on the back it has been marked "For deposit only Lowe Publishing Corporation account number 18-10-57227" and then there is another mark from a First Jersey National Bank.

Q. Were Government's Exhibit numbers 22, 23, and 24 in evidence mailed by you on or about March 2, 1982?

A. That's correct. I mailed it from a mailbox in Brooklyn.

Q. Thank you.

Mr. Biolsi, what, if anything, did you receive for your Lowe Investment and Financial Letter subscription?

A. Well, I didn't receive anything in March. I didn't receive anything in April. In May I received a letter from

Lowe Investment and Financial Letter stating that they had received my subscription and that I would soon be receiving my copies of the newsletter.

Q. I now show you Government's Exhibit 25 in evidence and ask you if you recognize that document?

A. Yes. This is the letter I received on or about May 10, 1982 at my home from Lowe Investment and [47] Financial Letter.

Q. Mr. Biolsi, how many issues of the Lowe Investment and Financial Letter did you receive?

A. I received two in June, two in July and one in August in 1982.

Q. I show you now Government's Exhibit numbers 9, 10, 11, 12 and 13 in evidence and I ask you if you recognize those?

(Witness examining document.)

A. Yes. Exhibit 9 is the one I did receive in the early part of June.

Exhibit 10 also the one I received in June.

Exhibit 11 is the one I received in July.

Exhibit 12 is the one I also received in July and Exhibit 13 is the one I received later on in August.

Q. Do Government's Exhibits 9, 10, 11, 12 and 13 constitute the only issues of the Lowe Investment and Financial Letter that you received during the course of your subscription?

A. That's correct.

[48] Q. Mr. Biolsi, have you heard of the Lowe Stock Advisory?

A. Yes, I have heard of it.

Q. Under what circumstances did you first hear of it?

A. Well, in July of this year I was again asked by my superiors at the Commission to subscribe to the Lowe Stock

Advisory for one year, similar to the circumstances of the Lowe Investment and Financial Letter.

Q. Mr. Biolsi, I now show you Government's Exhibit numbers 26, 27, and 28 in evidence and I ask you if you recognize those documents?

(Witness examining documents.)

A. This Exhibit 26 is my letter to Lowe Stock Advisory back in July of this year.

Exhibit 27 is the subscription blank that I filled out for the Lowe Stock Advisory.

Exhibit 28 is my check that was returned to me stamped, "cancelled," to Lowe Publishing Corporation.

Q. Did you mail Exhibits 26, 27 and 28 to the Lowe Stock Advisory on or about July 15, 1982?

A. Yes, I did.

Q. What, if anything, did you receive from Lowe Stock Advisory after you mailed in your subscription?

[49] A. Well, in August, 1982, I received a letter back from Lowe Publishing Company also with my check enclosed and a letter said that they were thankful that I subscribed to the service—

Mr. Schoeman: Objection, your Honor. The letter is in evidence, it speaks for itself.

The Court: Yes.

A. I received the letter and I received my check marked cancelled on the back from Lowe Publishing Corporation.

Mr. Hickey: Your Honor, we didn't hear what you said.

The Court: I can't hear you.

Mr. Hickey: I couldn't hear what you said.

The Court: What is the problem?

Ms. Rose: You had made a comment a moment ago and we did not hear what you said?

The Court: It wasn't of any importance, I am sure. Let's move ahead.

What is this about anyway? I don't understand why we are getting this evidence. Is this to show that they were mailing out these bulletins and things?

Mr. Hickey: Yes, your Honor.

[50] The Court: Well, they put all of this in evidence. What's the point of this?

Mr. Hickey: Well, your Honor, we are addressing the issue regarding the regularity or lack thereof of the—

The Court: Why don't you ask him to stipulate when these things were actually mailed and I am sure they will tell you. There is no question about any of this. Why are we wasting our time?

Just tell us what you want to prove and they will say they agree and that's it.

Q. Mr. Biolsi, during the course of your subscription to the Lowe Investment and Financial Letter, were you ever told by Lowe Publishing Corporation, Lowe Investment and Financial Letter or Christopher Lowe that Mr. Lowe had been barred from being associated with any investment advisor by the Commission's order dated May, 1981?

A. No, I was not.

Q. Were you ever told by the Lowe Investment and Financial Letter or Lowe Publishing Corporation or Mr. Lowe that Lowe had been convicted of two counts of theft in New Jersey this year?

[51] A. No, I was not.

Mr. Hickey: No further questions.

The Court: Cross examine.

Mr. Schoeman: Are there any 3500 materials for this witness?

Ms. Rose: No, there are not.

Cross-examination by Mr. Schoeman:

Q. Mr. Biolsi, who gave you the instructions the first time when you first wrote in to the Lowe Investment—

A. Do you want the names?

Q. Yes, the names.

A. They were two individuals. Mr. Charles Paget and Mr. Frank Morrison.

Q. When you wrote in, did you say, "I am interested in receiving the newsletter to broaden my investment horizon"?

A. Can I see the letter, sir?

(Document handed to the witness.)

A. Yes, sir.

Q. That wasn't true, was it?

A. No, it was not, sir.

Q. I didn't hear your answer?

A. No, it was not, sir.

[52] Q. Did you rely on the Lowe Investment Letter for any investment decisions you made?

A. No, I did not, sir.

Q. Do you subscribe to other newsletters, financial newsletters?

A. No, I do not, sir.

Mr. Schoeman: No further questions.

The Court: Thank you, sir.

What are the other witnesses going to say, maybe we can stipulate.

Ms. Rose: Basically they will say that they received the publication from the defendant on the

erotic [*sic*] basis; that they were not told of the bar of the revocation or of defendant Lowe's criminal conviction and had they been told that defendant Lowe had been barred from the Commission, had been convicted or that the registration of Lowe Management Corporation had been revoked, they would have wanted additional information and perhaps they would not have subscribed.

The Court: You're not going to object to any of that, that's clear.

Mr. Schoeman: Well, the last part of it, Judge, I think I don't agree with. The publications, [53] we have turned over the publications during discovery. They have all—

The Court: They have the dates of mailing?

Mr. Schoeman: I think they got that from the printers, but I am not sure.

The Court: All right. Well then, there is no question about it if there is a stipulation—is there any doubt that if they had known that this man had been convicted of fraud, or if he had been barred, they would have wanted more information?

Mr. Schoeman: He was not convicted of fraud, your Honor.

The Court: Or whatever.

Mr. Schoeman: Or whatever but not fraud.

Yes, I have some doubt about that.

The Court: You do, all right.

Are these other witnesses standing by?

Ms. Rose: They are out in the hall, your Honor.

The Court: Bring them in and just let them be subjected to cross examination. Everything else is stipulated to, I would think.

Bring them in and let him cross examine them.

[54] Ms. Rose: Okay.

The Court: One at a time.

We agree we can get them all finished very quickly. Next witness, please.

Ms. Rose: We will call Robert Burns.

ROBERT BURNS, called as a witness, having been first duly sworn by the Court, was examined and testified as follows:

The Court: You were a subscriber to some of these Lowe publications?

The Witness: Yes.

The Court: Did you know that he had ever been convicted of anything?

The Witness: No.

The Court: Did you know that he had been barred as an investment advisor?

The Witness: No.

The Court: Would you have wanted to know that?

The Witness: I think so, yes.

The Court: Pardon?

You would, all right.

Cross examine.

[55] *Cross-examination by Mr. Shoeman:*

Q. Mr. Burns, you're not a subscriber of the Lowe Investment and Financial Letter; are you?

A. That's right

May I?

Mr. Schoeman: No further questions.

The Court: What relationship did you have to these?

The Witness: My mother and myself, my mother is actually the person who wrote the check and—

The Court: But you read them and relied on them?

The Witness: Yes, it was at my suggestion that my mother subscribed.

The Court: Do you want to question him further?

Mr. Schoeman: Yes.

Q. Did you receive issues of the Lowe Financial Letter which have been marked as Exhibits 9, 10, 11, 12 and 13?

(Witness examining documents.)

A. I have not received Exhibit 9. I have not [56] and I did receive 10, 11, 12 and 13.

Q. You did or you did not?

A. I did.

Q. Did you read them?

A. Yes.

Q. Did you like them?

A. I felt there was a certain—a possible inconsistency.

Q. In the advice?

A. Yes.

Q. Did you like the way they were written?

A. I like the first letter that was written more than any of the others.

Q. Would you like to continue to receive them?

A. No.

Q. Have you relied on the Lowe Investment Letter in making investment advice?

A. No, I haven't.

Mr. Schoeman: No further questions.

The Court: Thank you, sir.

Next witness, please.

Ms. Rose: The Government calls Alvira Haden.

[57] ALVIRA HADEN, called as a witness, having been first duly sworn by the Court, was examined and testified as follows:

The Court: Did you subscribe to some of these Lowe documents?

The Witness: Yes, I did subscribe to the Lowe Financial Letter.

The Court: Did you know that he had been convicted of something?

The Witness: No, I did not.

The Court: Did you know that he had been barred by the SEC as an advisor?

The Witness: No.

The Court: Would you have wanted to know that?

The Witness: I think so. If you're investing your money, you would want to know.

The Court: All right, you may examine.

Cross-examination by Mr. Schoeman:

Q. Mrs. Haden, you see in front of you Exhibits 9 through 13. Did you receive those?

(Witness examining documents.)

A. Yes, I did.

[58] I got the June, July and August.

Q. Did you read them?

A. I skimmed through them, yes.

Q. Did you subscribe to other financial newsletters?

A. Yes, I do.

Q. How many?

A. Probably four or five.

Q. Did you form an opinion about the quality of those exhibits that are in front of you?

A. I thought it was a fine letter. I had nothing against the letter itself.

Q. If the letter were to be published on a regular basis, would you like to continue to receive it?

A. Well, if it was published on a regular basis, I would take it for comparison with some of the other things I get but I haven't been getting it very often.

Q. But on the assumption that—just on the assumption now that it were to be published on a regular basis, you would like to continue to get it; is that correct?

A. I think I would probably want to continue getting it if—I used it mostly as a comparison with other ones.

[59] Mr. Schoeman: Thank you, no questions.

The Court: Thank you Ma'am, next witness please.

Mr. Rose: Next witness Janice Arahill.

JANICE ARAHILL, called as a witness, having been first duly sworn by the Court, was examined and testified as follows:

The Court: Do you subscribe to some of these Lowe publications?

The Witness: Yes, one.

The Court: One, which one is that?

The Witness: The Advisory.

The Court: Do you know he had been convicted of something?

The Witness: No, I did not.

The Court: Were you aware that he had been barred by the SEC as an advisor?

The Witness: No, I did not.

The Court: Would you have wanted to know that?

The Witness: I would have wanted to know all of the facts.

The Court: All right.

Cross examine.

[60] *Cross-examination by Mr. Schoeman:*

Q. Mrs. Arahill, my name is Michael—

A. It is Miss Arahill.

Q. My name is Michael Schoeman and I am the attorney for the defendant.

You see in front of you Exhibits 9 through 13; do you see them?

(Witness examining documents.)

A. Yes.

Q. Did you receive those?

A. I will let you know if I received all of them.

Q. Would you just look through them and see if you received them?

A. I did not receive June 4th. I received June 18th. I did not receive July 7th. I received July 23rd. I have August 31st.

Q. Do you remember speaking with Mr. Hickey on August 24, 1982 in the morning?

A. Yes.

Q. He is the man from the SEC, the gentleman sitting here.

Do you remember telling him that you received [61] two issues of the Lowe Investment and Financial Letter in June?

A. As I look through June 4th, I had paid for my newsletter in January and I didn't receive any until June.

Q. But how many did you receive in June; if you remember?

A. I gave him what I had.

Q. Do you remember if you received one or two in June; that's what I am asking you?

A. Looking through the June 4th, I don't remember the information in June 4th.

Q. Did you read any of those publications—excuse me, any of these issues that you did receive?

A. Yes.

Q. Do you subscribe to other newsletters issued by financial publishers?

A. Yes, I do.

Q. How many others do you subscribe to?

A. Maybe about four.

Q. Do you have any opinion of the quality of the four issues that are in front of you that you did receive?

A. The quality is good so long as I have the [62] information there if I wanted to sell—if it was regular.

Q. If you were to receive the publication on a regular basis, would you like to continue to get it?

A. Yes.

Mr. Schoeman: No further questions.

The Court: Thank you, Ma'am.

How many more witnesses?

Ms. Rose: There are two more.

The Court: Well, are they going to say anything from what these witnesses are saying?

Ms. Rose: Not substantially different testimony, your Honor. They will say that they did not receive the newsletter regularly and they were not told and they probably—they may not want to continue the subscription with knowledge that Mr. Lowe had been convicted of crimes.

The Court: It seems to me it is cumulative. We have enough; don't we?

Mr. Schoeman: I would think so, your Honor.

The Court: Yes, this is cumulative.

The Government rests?

Ms. Rose: The Government rests, your Honor.

[63] The Court: Any evidence from the defendant?

Mr. Schoeman: No, sir.

The Court: And it rests?

The trial is completed.

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Judgment of the District Court

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

FILED
In Clerk's Office
U.S. District Court E.D.N.Y.
February 3, 1983

CV 82-1616 (JBW)

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

against

CHRISTOPHER L. LOWE a/k/a CHRIS L. LOWE,
LOWE PUBLISHING CORPORATION,
LOWE MANAGEMENT CORPORATION,
LOWE STOCK CHART SERVICE INC.,

Defendants.

A memorandum and order of Honorable Jack B. Weinstein, United States District Judge having been filed on February 1, 1983, denying the petition for a temporary and permanent injunction pursuant to section 209(e) of the Advisers Act, 15 U.S.C. §80b-9(e) (1976); and further denying the petition for an equitable order of disgorgement of monies received in the course of the business of impersonal investment advisory publication, and further

ORDERING that an injunction issue denying defendants permission to give securities information to their subscribers or potential subscribers directly or indirectly by telephone, individual letter or in person, it is

ORDERED and ADJUDGED that judgment is hereby entered denying the petition for a temporary and permanent injunction pursuant to section 209(e) of the Advisers Act, 15 U.S.C. §80b-9(e) (1976), and it is further

ORDERED and ADJUDGED that judgment is hereby entered denying the petition for an equitable order of disgorgement of monies received in the course of the business of impersonal investment advisory publication, and it is further

ORDERED and ADJUDGED that judgment is hereby entered enjoining the defendant from giving information to their subscribers or potential subscribers directly or indirectly by telephone, individual letter, or in person.

Dated: Brooklyn, New York
February 2, 1983

Approved /s/ JACK B. WEINSTEIN

JACK B. WEINSTEIN, *Chief Judge*

/s/ RICHARD H. WEARE

Richard H. Weare
Clerk of Court

A TRUE COPY
ATTEST
Dated 2-9-1983

RICHARD H. WEARE
Clerk

By /s/ E. ORTIZ
Deputy Clerk

Trial Exhibit No. 1:

Opinion and Order of the Securities and Exchange Commission

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

INVESTMENT ADVISERS ACT OF 1940

Rel. No. 759/May 11, 1981

Admin. Proc. File No. 3-5323

In the Matter of

LOWE MANAGEMENT CORPORATION
26 Broadway
New York, New York
(801-9864)

CHRIS L. LOWE

OPINION OF THE COMMISSION

INVESTMENT ADVISER PROCEEDINGS

Grounds for Remedial Sanctions

Misappropriation of Client's Funds

Criminal Convictions

Failure to Comply with Reporting Requirements

Where registered investment adviser and its president misappropriated client's funds and failed to comply with reporting requirements, and where president had been convicted of crimes involving, among other things, misappropriation of funds, *held*, in public interest to to revoke adviser's registration, and bar president from association with any investment adviser.

APPEARANCES:

Michael E. Schoeman, of Schoeman, Marsh, Updike & Welk, for respondents.

Lawrence J. Toscano, Charles E. Padgett and *Thomas R. Hickey, Jr.*, for the Commission's Division of Enforcement.

I.

Lowe Management Corporation ("registrant"), a registered investment adviser, and Chris L. Lowe, its president and principal stockholder, appeal from the adverse decision of an administrative law judge. The law judge found that registrant, aided and abetted by Lowe, violated antifraud and reporting provisions, and that Lowe had been convicted of various crimes, including the misappropriation of funds. The law judge concluded that registrant's investment adviser registration should be revoked, and that Lowe should be barred from association with any investment adviser. Our findings are based on an independent review of the record.

II.

The law judge found that respondents misappropriated funds belonging to one of registrant's clients, a Mr. B. The relevant facts are as follows.

In the spring of 1976, Mr. B entered into an investment management agreement with registrant pursuant to which the firm was authorized to effect discretionary transactions in a brokerage account to be opened with a named broker-dealer. In accordance with Lowe's instructions, Mr. B, who wished to invest $10,000, deposited that sum with the

broker-dealer. In about August 1976, Mr. B received a statement showing a balance of about $35 in his account with no indication of what had happened to the rest of his money. Becoming suspicious, he decided to liquidate his account and requested Lowe to send him a check for the proceeds. After about two months in which he failed to receive a response, Mr. B complained to this Commission. Shortly thereafter, he received a telephone call from Lowe who said that he had been out of town and would mail Mr. B a check immediately. In late 1976, still not having received a check, Mr. B telephoned Lowe who stated that the check must have gotten lost and that he would send another. Thereafter, Mr. B received a check for about $8,800. However, it was not honored because there were insufficient funds in the account on which it was drawn. Mr. B called Lowe "over and over again" about the check, and Lowe said that "he [would] make good on it." However, although Mr. B received three more checks, none of them was honored.

Around July 1977, the New York State Attorney General's office, to which Mr. B had complained, advised Mr. B that Lowe had been arrested and had promised to make full restitution. Shortly thereafter, it sent Mr. B a check which it had obtained from Lowe. But, as before, the check was not honored. The same thing occurred with respect to a second check that Mr. B obtained from Lowe through the Attorney General's office. In February 1978, Lowe told Mr. B that he had been sent a $10,000 money order. In fact, however, the money order was only for $10.

In February or March 1978, Mr. B, who had retained an attorney, finally recovered his $10,000 less the attorney's

fee. However, the payment was only made after the institution of criminal proceedings against Lowe in New York.

In light of the foregoing, we think it clear that respondents improperly withheld Mr. B's funds, and made misstatements concerning their return.[1] Accordingly, we conclude that registrant, willfully aided and abetted by Lowe, willfully violated Sections 206(1) and 206(2) of the Investment Advisers Act.[2]

III.

The law judge found that Lowe had been convicted of various crimes. In March 1978, he pled guilty to charges that, in violation of New York law, he engaged in business as an investment adviser without filing the requisite regis-

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1. Registrant claims that there is no evidence that Lowe was acting for it. We disagree. Lowe was registrant's president and principal stockholder. Mr. B was registrant's client. And registrant issued at least two of the dishonored checks sent to Mr. B. Moreover, we have repeatedly held that the violations of a firm's employees in the course of their employment must be considered the violations of the firm. See, e.g., *Sutro Bros. & Co.*, 41 S.E.C. 443, 479 (1963); *Mississippi Valley Investment Company*, Securities Exchange Act Release No. 12683 (Aug. 2, 1976), 10 SEC Docket 168, 169. We further note that Section 203(e) of the Investment Advisers Act provides that, if we find that a person associated with an investment adviser has violated any provision of the Act, we may sanction the adviser if we find that doing so is in the public interest.

2. We find that respondents clearly had the scienter necessary to establish violations of Section 206(1). See *Steadman* v. *S.E.C.*, 603 F.2d 1126, 1134 (C.A. 5, 1979). In any event, findings of scienter are not required in order to establish violations of Section 206(2). *Id.* See also *S.E.C.* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195, 200 (1963); *Aaron* v. *S.E.C.*, 446 U.S. 680, 691-693, 696-697 (1980). And all of our findings of fraud are made under the latter section. Our findings that respondents also violated Section 206(1) are merely cumulative, and the sanctions we are imposing would be the same even if we had made no findings under that provision and had made findings solely under Section 206(2).

tration application with state authorities,[3] and represented to a client that a 27% profit had been earned by managing his portfolio when, in fact, no transactions had been effected for the client and Lowe had misappropriated the client's funds.[4] In addition, in December 1978, Lowe pled guilty to charges of grand larceny. He deposited checks in a New York bank drawn on an out-of-state account that had been closed, and then issued a check drawn on the purported balance in his New York bank.

Under Sections 203(e) and (f) of the Advisers Act, each of Lowe's convictions provides a separate basis for administrative sanctions against respondents, if we find that such action is in the public interest. Respondents contend that the imposition of such sanctions would entail an unwarranted "second round of punishment." We disagree. These proceedings were not instituted to punish respondents, but to determine whether it is necessary to protect the public from further harm at their hands. As noted below, we think that such protection is required.

IV.

The law judge also found that respondents failed to comply with reporting requirements. Registrant did not promptly amend its application for investment adviser registration (Form ADV) to disclose Lowe's March 1978 convictions

3. Article 23-A, Section 359-eee of the New York General Business Law makes it unlawful for any person to act as an investment adviser in that state unless he has filed a registration statement with the appropriate state authorities.

4. Article 23-A, Section 352-c of the New York General Business Law, as here relevant, prohibits any fraudulent act or practice or any false representation where the person who made it knew the truth.

involving the misappropriation of funds and failure to register with New York authorities as an investment adviser. It was not until December 1979, after the institution of these proceedings, that registrant amended its application to disclose those convictions.

We accordingly conclude that registrant, willfully aided and abetted by Lowe, willfully violated Section 204 of the Act and Rule 204-1(b) thereunder.[4]

V.

Respondents argue that the sanctions which the administrative law judge imposed are too severe. They assert that Mr. B recovered all his funds, and that they no longer handle clients' funds or securities. Respondents state that they are now engaged solely in the business of publishing two advisory newsletters on a subscription basis, and that the publications enjoy an excellent reputation in the investment community. They point to the fact that the charges against them are unrelated to those publications.[5]

4. Respondents claim that this Commission has no statutory authority to require an investment adviser to amend its registration application. But Section 204 of the Act requires every investment adviser to "make and disseminate such reports as the Commission, by rule, may prescribe . . . ." Clearly, the amendment required by Rule 204-1(b) constitutes a "report" within the meaning of Section 204. Nothing in the Act or its legislative history supports respondents' restrictive reading of that section.

Respondents further claim that any violation was not willful. But, as we have previously held, the failure to make a required report, even though inadvertent, constitutes a willful violation. See, *e.g.*, *Haight & Company, Inc.*, 44 S.E.C. 481, 507 (1971), *aff'd*, C.A.D.C. (June 30, 1971); *Oppenheimer & Company, Inc.*, Securities Exchange Act Release No. 16817 (May 19, 1980), 20 SEC Docket 58, 59.

5. Respondents accordingly claim that the sanctions imposed by the law judge amount to a prior restraint on publication in violation of their First Amendment rights. This claim is wholly lacking in merit. See *Savage* v. *Commodity Futures Trading Commission*, 548 F.2d 192 (C.A. 7, 1977); *S.E.C.* v. *McGoff*, —— F.2d —— (C.A.

(footnote continued on next page)

Respondents' misconduct could hardly be more serious. There can be no justification for the deliberate misappropriation of a client's funds. The fact that the client was ultimately repaid does little to alleviate our concern about respondents' fitness for the advisory business,[6] particulary since restitution was made in an effort to obtain leniency in criminal proceedings then pending against Lowe. As noted above, Lowe has been convicted of crimes involving larceny, misappropriation of funds, and engaging in the advisory business without required state registration. In addition, in December 1978, he pled guilty to a charge of tampering with evidence.[7] Lowe's various actions clearly demonstrate his total lack of fitness to remain in

D.C., February 3, 1981). As the Supreme Court has stated with respect to a similar claim of undue restriction on free speech, "[W]e think it clear that a government regulation is sufficiently justified if it is within the constitutional power of the Government; if it furthers an important or substantial governmental interest; if the governmental interest is unrelated to the suppression of free expression; and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *U.S.* v. *O'Brien*, 391 U.S. 367, 377 (1968). Respondents also attack the constitutionality of the Advisers Act in other respects. These claims are likewise devoid of substance. In any event, we must proceed on the assumption that our governing statutes are constitutional unless the courts declare otherwise. See, *e.g.*, *Mutual Fund Distributors, Inc.*, 41 S.E.C. 174, 181 (1962); *Stanford Investment Management, Inc.*, 43 S.E.C. 864, 874 (1968); *Milton J. Wallace*, 45 S.E.C. 694, 697 (1975).

6. See *International Research & Management Corp.*, Investment Advisers Act Release No. 617 (March 6, 1978), 14 SEC Docket 410, 414, *aff'd without opinion*, 588 F.2d 821 (C.A. 3, 1978); *Benjamin Levy Securities, Inc.*, Securities Exchange Act Release No. 14368 (January 12, 1978), 13 SEC Docket 1348, 1349.

7. In an effort to obtain leniency in the March 1978 criminal proceedings, Lowe presented to the court a photocopy of the money order he issued to Mr. B, or a receipt therefor, showing that the amount of the order was $10,000, when, as he knew, the actual amount was only $10.

"an occupation which can cause havoc unless engaged in by those with appropriate background and standards."[8]

It is well established that an investment adviser is a fiduciary whose actions must be governed by the highest standards of conduct.[9] It is apparent that respondents' actions reflect a callous disregard for those standards. Although we recognize the serious effect of the sanctions which the law judge imposed, we are convinced that lesser remedies will not suffice. We do not seek to punish respondents but, in light of their egregious misconduct, we must protect the public from future harm at their hands. In evaluating the public interest requirements in this case, we have taken into account respondents' statement that they are now solely engaged in the business of publishing advisory publications. However, respondents are still free to engage in all aspects of the advisory business. And, as the law judge noted, even their present activities afford numerous "opportunities for dishonesty and self-dealing."

Under all the circumstances, we are convinced that the public interest requires the revocation of registrant's investment adviser registration, and a bar of Lowe from association with any investment adviser.

8. See *Marketlines, Inc.* v. *S.E.C.*, 384 F.2d 264, 267 (C.A. 2, 1967), *cert. denied*, 390 U.S. 947. We further note, as the law judge pointed out, that respondents' failure to amend registrant's application for registration until these proceedings were instituted demonstrates "an indifference to important regulatory requirements."

9. See *S.E.C.* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 191-192 (1963); *Rosenfeld* v. *Black*, 445 F.2d 1337, 1342-1344 (C.A. 2, 1971); *Joseph P. D'Angelo*, Investment Advisers Act Release No. 562 (December 16, 1976), 11 SEC Docket 1263, 1264, *aff'd without opinion*, 559 F.2d 1202 (C.A. 2, 1977).

An appropriate order will issue.[10]

By the Commission (Commissioners Loomis, Evans, Friedman and Thomas); Chairman Shad not participating.

/s/ George A. Fitzsimmons
George A. Fitzsimmons
Secretary

10. We have fully considered all of the contentions raised by respondents and our staff. Their exceptions to the initial decision are overruled or sustained to the extent they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
INVESTMENT ADVISERS ACT OF 1940
Rel. No. 759 / May 11, 1981
Admin. Proc. File No. 3-5823

In the Matter of
Lowe Management Corporation
26 Broadway
New York, New York
(801-9864)

Chris L. Lowe

On the basis of the Commission's opinion issued this day, it is

Ordered that the registration of Lowe Management Corporation as an investment adviser be, and it hereby is, revoked; and it is further

Ordered that Chris L. Lowe be, and he hereby is, barred from association with any investment adviser.

By the Commission.

/s/ George A. Fitzsimmons
George A. Fitzsimmons
Secretary

Trial Exhibit No. 6:

Judgment of Conviction and Order of Commitment

NEW JERSEY SUPERIOR COURT
UNION COUNTY
LAW DIVISION—CRIMINAL

S. B. I. No. 011411B

DATE OF ARREST 9/21/81

THE STATE OF NEW JERSEY

vs

CHRISTOPHER LOUIS LOWE

The defendant on 10/28/81 was indicted on Indictment #172, 1981 Term.

The defendant on 11/25/81 entered a plea of not guilty to the Indictment for the crime (S) of: (Please include Title, Statute and Degree)

Theft by Deception (Third Degree) N.J.S. 2C:20-4

and the defendant having on 1/14/82 RETRACTED PLEA OF NOT GUILTY AND ENTERED A PLEA OF GUILTY TO: Counts #1 & #2.

Theft by Deception (3rd Deg.)

Motion by defendant to be permitted to retract Guilty plea & enter plea of Not Guilty—DENIED.

IT IS, THEREFORE, on 2/19/82 ORDERED AND ADJUDGED that the defendant be and is sentenced.

Count #1—Commissioner of the Department of Corrections for a term of three (3) years. Defendant shall make restitution in the amount of $7,635.01 payable at the rate of $25.00 per week through the Department of Corrections and remitted to the First National Bank of New Jersey, 443 W. North Ave., Westfield, N.J. Attn: Mr. Joseph A. Davis.

Count #2—Commissioner of the Department of Corrections for a term of three (3) years to be served concurrently with sentence imposed on Count #1. Defendant shall make restitution in the amount of $19,740.75 payable at the rate of $25.00 per week through the Department of Corrections and remitted to the Central Jersey Bank & Trust Co., 177 E. Broad St., Westfield, N.J. Attn: Mae Goldweitz, Asst. Treasurer.

A penalty of $25.00 is imposed on each count on which the defendant was convicted unless the box below indicates a higher penalty pursuant to N.J.S.A. 2C:43-3.1. —— penalty imposed on count(s) ————is $————respectively. Total fine ————. Total restitution $27,375.76. Total V.C.C.B. Penalty $50.00. Installment payments, if applicable, are due at the rate of $57.00 per week.

IT IS FURTHER ORDERED THAT THE SHERIFF DELIVER THE DEFENDANT TO THE AFORENAMED INSTITUTION TO SERVE HIS/HER SENTENCE.

STATMENT OF REASONS REQUIRED BY R.3:21-4(a) APPEARS ON THE REVERSE SIDE.

ATTORNEY FOR DEFENDANT Upon entry of Guilty Plea of conviction	Defendant to receive R.3:21-8 credit for time spent in custody
ANTHONY MARRA	From 9/21/81 to 9/29/81
ANTHONY MARRA At time of sentencing	Days credit 9

/s/ WALTER G. HALPIN
County Clerk

February 19, 1982
Date

STATEMENT OF REASONS, R.3:21-4(e)

/s/ RICHARD P. MUSCATELLO

Judge
HON. RICHARD P. MUSCATELLO, J.S.C.

STATE OF NEW JERSEY

COUNTY OF UNION

UNION COUNTY, ss.:

I, WALTER G. HALPIN, Clerk of the County of Union, aforesaid, and also Deputy Clerk of the Superior Court of Union County, Holden therein

DO HEREBY CERTIFY, That the foregoing is a true and correct copy of a certain Judgment of conviction & order of commitment, Order denying motion for bail pending appeal

The State of New Jersey

vs.

CHRISTOPHER LOUIS LOWE

Indictment #172, 1981 Term

as the same is taken from and compared with the original filed in my office.

[SEAL]

IN TESTIMONY WHEREOF, I have hereunder set my hand and affixed the seal of said Court and County, at Elizabeth, N.J. this 28th day of May, 1982

/s/ WALTER G. HALPIN
County Clerk and Deputy Clerk of the Superior Court
WALTER G. HALPIN

EDITOR'S NOTE

PAGES JA 78 thru JA 85 WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

LOWE INVESTMENT & FINANCIAL LETTER

FOUNDED IN 1977 • MARKET TIMING & STOCK SELECTION FOR MAXIMUM PROFITS

VOL. V, No. 9, Friday, December 11, 1981

ENT FORECAST & STRATEGY

Current market weakness should end in a week or two, then we expect a good market advance to 920 then as high as 1000. Majority of our market indicators are favorable, however, remember that this is only an intermediate rally and not the beginning of a new bull market. Get into a 65-75% invested position as recommended in the Boardroom section. Retain 25-35% cash for additional buying later. Close out any short positions. GOLD & SILVER: Major policy change: Investors sell all gold mining shares at this time to avoid disastrous decline. Traders have been out of gold mining shares since November 1980. At $405.50 today, bullion appears ready to fall below $400 soon and test lows. Silver's weakness is likely to continue and a dip to the $4-6 area is a strong possibility.

HEALTHY MARKET ADVANCE APPROACHES

While the market's intermediate term advance is over two months old, the Dow Jones Industrial Average (DJIA) just confirmed the advance by moving to a new recovery high, the last of the major indices to do so. Despite the confirmation, and the current intermediate term strength in the market and DJIA, there is still reason to be cautious as this is an intermediate term rally, and not the beginning of a new bull market, which could be aborted at any time. Right now, SELECTIVITY is the key to playing this market.

First let's take a look at the longer-term outlook and the reasons why we don't feel it is the beginning of a new bull market. (1) Poor Tape Action among the blue chip sector, e.g., General Motors, IBM, etc., even while the market was advancing from the late September-early-October bottom. The longer-term charts of these stocks are not favorable and haven't been for some time; (2) Margin Debt has rolled over and this represents potential forced selling, thus knocking stock prices down. A snowball effect here would have a very negative impact on the market; (3) Interest Rates have come down, and we look for a further drop (probably the prime will fall as low as 12% in the next few months) but the real peak in rates is still to come, probably in 1982. This bodes poorly for the market; (4) There was no real Doom and Gloom at the September-October bottom as in 1970 and 1974. This is necessary to launch a powerful new bull market; (5) Actions of Members is poor as they continue to short heavily and haven't yet begun to accumulate stocks in accordance with previous major market bottoms; (6) The majority of world stock markets are in downtrends and this is unfavorable for our outlook.

From an intermediate and short term point of view, the outlook is much better. A great majority of market indicators are very positive now, and have been favorable since the beginning of the advance. Breadth Indicators have confirmed the advance and are in super shape at this time indicating that the advance has plenty of fuel left. Specialists Activities have greatly improved and the Specialists Short Sale Ratio flashed a favorable signal for the first time in a while. Advisory Sentiment reached a very favorable high of 57.6% bearish, and after being above 50% for 12 weeks, has now dropped off. Also important here is that the bullish percentage of advisors, which hit a three year high of 55%, has now dropped off as well. Monetary Indicators are now more positive than in a long time and the Federal Funds/Discount Rate Indicator will probably flash a buy signal in the next two weeks. If so, that could signal the beginning of a good advance. Also encourging in the monetary sector is the bond market showing signs of coming to life. The bond market should continue its improvement as interest rates decline further. Odd Lot Indicators are favorable, as well as the cash position of mutual funds at 10.9%. Wysong's Risk Exposure Ratio is in neutral territory, and this is favorable for the market. Insider Activity is also favorable. The NYSE Composite and S&P 500 Composite Averages have already regained over 50% of their previous loss. This indicates an excellent chance of their advance continuing in the future. While the DJIA has yet to regain 50% of its previous loss should it do so (it must climb above 919), would indicate that its advance has further to run as well.

For the short term, the market is currently experiencing weakness. We expect this weakness to continue for another week or two as the market consolidates some of its gains, experiences tax selling and works off its overbought condition. Breadth is also dragging. With good support at 860-870, we doubt the weakness will be severe, and a resumption of the advance should get back underway before year-end. How high will the market climb? The consensus among professionals is the 920-960 area on the DJIA and that's what we've said before too. However, there's just too much of that type of thinking going around for us and we feel very un-

Continued on page six

The LOWE INVESTMENT & FINANCIAL LETTER (ISSN 0193-9262), a financial magazine of general and regular circulation is sold by subscription or by the copy at $15.00 each and is published by Lowe Publishing Corporation. Issues are published twice-monthly and interim special issues are published whenever the situation warrants same. RESEARCH CHAIRMAN & EDITOR: Christopher L. Lowe. SUBSCRIPTIONS: Linda Lanzi. Subscription rates: Introductory trial (one time only): 3 months: $25; 3 month renewal: $65; 6 months: $110; one year: $195; two years: $330. Overseas airmail add $15.00 per year; special delivery at exact cost. This publication has been compiled from sources believed to be reliable, but we do not guarantee it as to accuracy, completeness or any other way. Nor is there any guarantee that future results will conform to those of the past. No portion of this publication may be reproduced in any way without advance written permission from the publisher.

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MARKET INDICATORS PERSPECTIVE

NYSE ADVANCE/DECLINE LINE: For the short and intermediate terms, in fine shape as this indicator has rallied above its September and October peaks to a new recovery high. Confirms the recovery high in the DJIA and the NYSE Composite Average. BULLISH.

NYSE NET NEW HIGHS/NEW LOWS: At 64 net new highs last week, has yet to flash a buy signal, however, the improvement from the late September-early October low at 698 net new lows, has confirmed the intermediate term rally.

NYSE NEW HIGHS/NEW LOWS: The 706 new lows the week of 2 October was the highest reading since March 1980 indicating a selling climax. However, it would have been much better for the intermediate term rally if the reading was much higher.

SHORT INTEREST/SHORT INTEREST RATIO: November's short interest figure rose to 78.9 million shares. This is bullish and represents future purchase demand. SHORT INTEREST RATIO rose from 1.55 to 1.70 which is MODERATELY BULLISH.

ODD LOT SHORT SALES: On the low side, moderately bearish, perhaps NEUTRAL at the outside.

NYSE MEMBERS' SHORT SALE RATIO: Latest NYSE figures have floor members accounting for 81.9% of total short sales, down from the previous week of 84.8%. This is the eighth week above 80% and is BEARISH. Four-week average is 84.5%, also BEARISH.

MEMBER'S TRADING: It appears that members are once again accumulating stock on balance, however, the two week drop was worrisome. If members continue to accumulate stocks it could signal the beginning of something big.

NYSE SPECIALISTS SHORT SALE RATIO: Latest NYSE report shows the most sophisticated floor members executing 36.5% of total short selling, which is BULLISH and is the 2nd lowest reading since the September bottom. An excellent omen for this intermediate term rally and which indicates that the rally is more powerful than thought. Four-week average is 36.4%, which is also BULLISH and is the lowest reading in some time.

INVESTORS INTELLIGENCE ADVISORY SENTIMENT: After hitting readings of over 50% for 12 straight weeks, bearish sentiment has now dropped off sharply to 41.5%. This was expected, however, what was worrisome was the huge number of bulls: 55%. But that, too, has dropped off also to 41.5%, MODERATELY BULLISH.

BELLWETHER STOCKS: In all, a sad group which supports our longer-term bearish outlook. These stocks, with the exception of Merrill Lynch, are acting very poor on the tape and this is extremely worrisome for the longer-term trend. DuPont at 40¼ is in a definite downtrend; support at 35. General Motors just hit a new 52-week low this week at 33 7/8, which not only is bearish for GM, but according to the 4-month rule, means we won't get a good market bottom for at least four months. IBM is also in a downtrend. None of these three stocks appears to be able to reverse their negative trends in the near future. The only bright spot is Merrill Lynch at 34 7/8, which is in a short-term uptrend and should do very well once the intermediate term advance gets underway with some better volume figures.

FOREIGN STOCK MARKETS: Virtually all major foreign stock markets are in downtrends which is negative for the longer-term outlook.

NYSE VOLUME: Average volume lately has been under 50 million shares. This will have to increase greatly in order to fuel a good intermediate move.

DJ INDUSTRIAL AVERAGE: Has now rallied to a new recovery high. Longer-term trend is down and therefore bearish, however, intermediate bottom was reached launching an intermediate term rally. The DJIA was lagging the overall market and didn't give a clear buy signal until the October peak was bettered on a closing basis. Resistance at 920. We look for the intermediate term rally to take the DJIA to the 920-960 area, perhaps as high as 1000.

DJ TRANSPORTATION AVERAGE: Has moved to a new recovery high which is quite favorable. May be in for a rest as the advance has been steep. Resistance at 400. BULLISH.

DJ UTILITIES AVERAGE: Benefiting from declining interest rates, the DJUA is acting very well and has moved out to a

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new recovery high. As interest rates continue their decline, the DJUA should climb upward challenging the recent high at the 119-120 area. BULLISH.

NYSE COMPOSITE AVERAGE: Test of the September lows was quite successful and was confirmed by the NYSE A/D Line. The NYSE Composite rallied off a very bullish reverse head and shoulders pattern which indicates a move to the 76-78 area. BULLISH.

S&P 500 COMPOSITE: While the intermediate term looks OK, the longer-term is not as favorable and this average is not looking at all the way we would like it to. Lagging the NYSE Composite and A/D Line which is not too favorable. For now, MODERATELY BULLISH.

ASE COMPOSITE: Has moved to a new recovery high and is above its 10 and 30 day moving averages. BULLISH for intermediate term.

NASDAQ COMPOSITE: Also favorable for the intermediate term.

MUTUAL FUNDS CASH POSITION: Up to 10.9% in October from 10.47% which is BULLISH even for the longer-term outlook.

WYSONG'S RISK EXPOSURE RATIO: After hitting a 48% BUY figure the week of 25 September, the RER is now in NORMAL/NEUTRAL territory at 58%. SELL signal will be flashed at 65%.

SCHABACKER PERFORMANCE INDICATOR: Latest figures: (11/27) 75% in equities, 25% cash.

MERRILL ANALYSIS INDICATOR: Latest figure as of 11/14 is a bullish 91.67%.

NYSE MARGIN DEBT: A very worrisome indicator for the longer-term trend. Margin debt "rolled over" and declined for the third consecutive month in October. Debt declined $110 million to $13.6 billion, lowest level in a year. Margin debt represents potential forced selling, especially once it rolls over, thus forcing stock prices down. Margin debt was at record levels earlier this year so the selling potential is greater.

MONETARY DATA: This group of indicators has turned quite favorable, the first time in quite a while. The prime rate has dropped from a peak of 20½% to 15 3-4 to 16%; federal funds rate has dropped to under 13% and the discount rate has been cut four times to 12%. This is indeed encourging and a buy signal could be given on the Federal Funds/Discount Rate Indicator in the next few weeks. Also very favorable is that free reserves have moved into positive territory. In all, very favorable for the intermediate term trend of the market. Also favorable is the fact that the bond market is showing signs of coming to life.

DJ 20 BOND AVERAGE: A buy signal was given at 57.20, resistance at 61-62 area, longer-term trend still bearish.

INSIDERS: Insiders have been buyers on balance for many weeks now and this is BULLISH for the intermediate term trend of this market.

DJIA P/E & YIELD: DJIA P/E at a BULLISH 7.2; yield also BULLISH at 6.21%

Precious Metals Corner/continued from page eight

we advised the purchase of several silver mining stocks, which racked up huge gains. In March 1980, we placed a stoploss of $30 on silver bullion for traders which was tripped that month and which stoploss has saved traders and investors alike a considerable sum. Our next signal was a trading buy signal in June, 1980 at $16, followed by a trading sell signal in October, 1980 at $20. (silver bullion having rallied as high as $24.25 in September, 1980).

Currently, with silver down to $8, due mainly to the recent silver auctions by the government, we do think there is a great possibility of a further drop, perhaps to as low as $4-6. While traders are out of silver at this time, we must urge investors to re-evaluate their positions in silver bullion and silver mining shares, as they too will be subject to a severe decline over the next three to six months. However, the demand for silver over the decade will continue to be greater than the supply and a target of $100 an ounce is not unrealistic by 1986, the next top according to the six year cycle. We will have our silver chart updated by our next issue and review the silver strategy in more detail then. For now, get out and stay on the sidelines.

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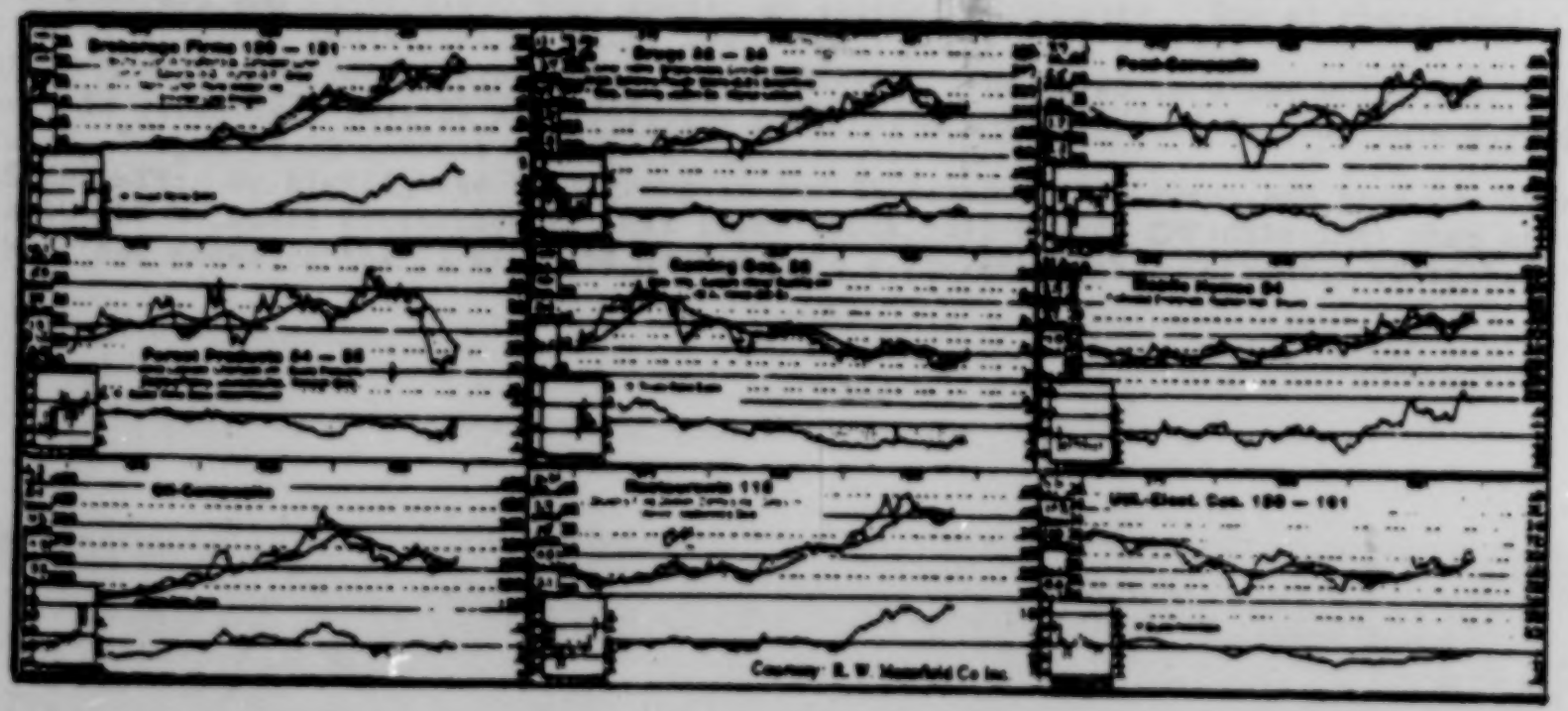
December 11, 1981

LIFL BOARDROOM

Despite the market's intermediate term strength, the key to market profits is SELECTIVITY. This is perhaps the most important thing to keep in mind at this time, especially since we view this rally as an intermediate term advance (bear market rally) which could be aborted at any time. Therefore, with that in mind, let us look at the most favorable areas. The most favorable groups at this time are: BROKERAGE FIRMS, DRUGS, FOOD-RELATED, FOREST PRODUCTS, GAMING, MOBILE HOMES, RESTAURANTS, OIL-RELATED and UTILITIES.



Groups to AVOID now (or SELL) are: AEROSPACE, AIR TRANSPORT, COPPER, COSMETICS, ELECTRONICS-TECHNOLOGY, GOLD MINING, HOSPITAL MANAGEMENT, OFFICE EQUIPMENT, AUTO MANFACTURERS, TEXTILES, and TRUCKERS.

The most attractive stocks for purchase within these favorable groups and the stocks we recommend for purchase now are:

BROKERAGE FIRMS: Donaldson, Lufkin, Jenrette (DLJ-NYSE-15). Already on our recommended list at 9½, recommended on 26 November 1980, DLJ just broke out on the upside to a new high at 15. Currently at 15, DLJ provides a great way to participate in a group that 1) is poised for a healthy move; 2) will enjoy a good rise during the market's intermediate term rally. DLJ is a good low-priced issue in this group. (A. G. Edwards also looks good.) Stop: 11 7-8.

DRUGS: Marion Labs (MKC-NYSE-26¼). Just broke out above 26 resistance area to a new multi-year high. While P/E is a high 28.2, the stock is showing good tape action, good relative strength and insiders have been accumulating this stock. Buy in 26-28 area with an intermediate target of 35-40. Stop: 20¼.

FOOD-RELATED: Several stocks in this group look attractive now. American Bakeries (ABA-NYSE-13 5/8) is coming off a bottom in the 10-12 area and has just broken out above the important 12 resistance area. Buy in 12-14 area for an initial target of 16-18. Stop 10½. Consolidated Foods (CFD-NYSE-33½). On the verge of breaking out above resistance at 34. Relative strength is good. Stop: 26½. Yield is 6.5%; P/E a modest 6.8. Keystone Foods (KFC-NYSE-15 5/8). On the verge of a break out above the heavy resistance at 16, which would put this stock at an all-time high. Relative strength is good. Buy

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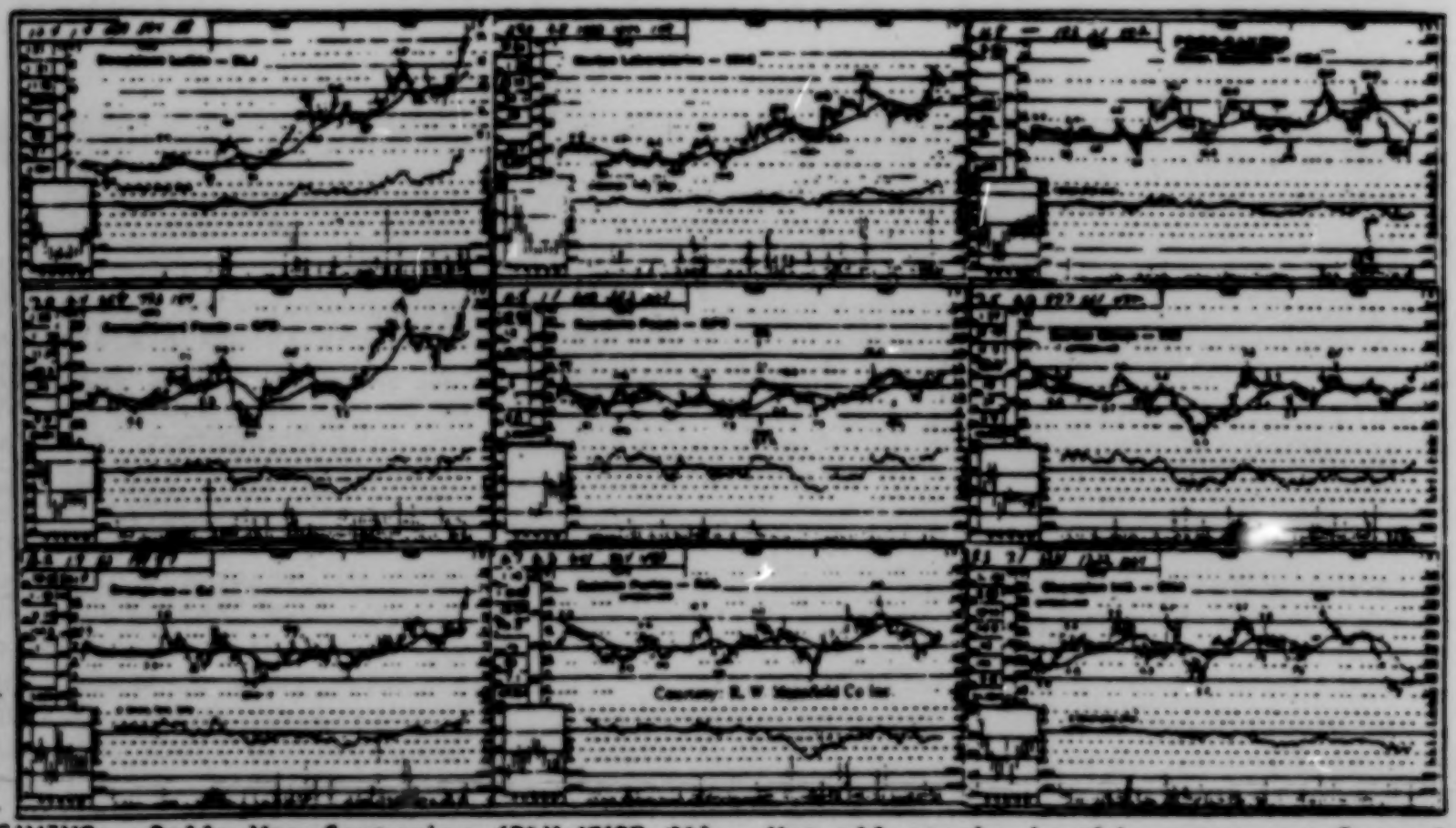
Boardroom--Continued from previous page

in 16 area. Stop: 12¼. Yield: 1.1%. Norton Simon (NSI-NYSE-17-1/8). Appears ready to breakout above the heavy resistance zone at 18. Good yield at 6.8%, buy especially on breakout above 18 or at current levels OK too. Stop: 13-7/8. Orange Co. (OJ-NYSE-10) Just moved to a multi-year high, breaking out above resistance in the 9 area. Appears poised to move to the 15-17 area at a minimum; excellent relative strength. Stop: 8¼. Ralston Purina (RAL-NYSE-11-3/4). Has rallied off support at the 10 area and appears ready to challenge the high made earlier this year. Buy in the 11-12 range, stop: 9¼. Increasing relative strength a plus.

FOREST PRODUCTS: Champion Intl (CHA-NYSE-21¼)? Coming off a bottom in the 18-20 area, CHA appears ready to regain some of its recent lost ground. Resistance at 24 area, however, increasing relative strength should help overcome this barrier. First target is 24, then a breakout above 28. Options available. Stop: 17 3/4. Georgia-Pacific (GP-NYSE-22). Same type pattern as CHA, however, there is resistance at 22 area. We believe a breakout above 22 would indicate a move toward 30 once again, especially on increasing relative strength. Stop: 18. Options also available. Louisiana-Pacific (LPX-NYSE-20). The more speculative of the group, and a breakout above 20-21 would turn LPX favorable. P/E is a high 18 and yield only 4.2%. Initial target: 26, then 28-30.



GAMING: Bally Manufacturing (BLY-NYSE-31). Not all stocks in this group are favorable, in fact only one at this time and that's Bally. BLY just made a powerful breakout above the heavy resistance area at 30, and we look for the move to be a powerful one. Initial target 40-45. This play is twofold: the gambling side (casinos and gambling equipment manufacturer) and video/electronic games, an explosive industry. Buy at these levels. Relative strength looks great. Stop: 24½. Don't forget the options.

MOBILE HOMES: Fleetwood Enterprises (FLE-NYSE-14). FLE moved to a new multi-year high above 14 recently. This is a speculative play, with a high P/E of 31, but in a strong group. Target 18-20. Place a stop at 11½.

RESTAURANTS: We highlighted this group in our 31 January 1981 issue and gave you three stocks which looked attractive at that time: Chock Full O Nuts CHF-NYSE-13½) then at 6-3/4, has moved to the 13 area and brokeout to a 10-year high. Currently it looks

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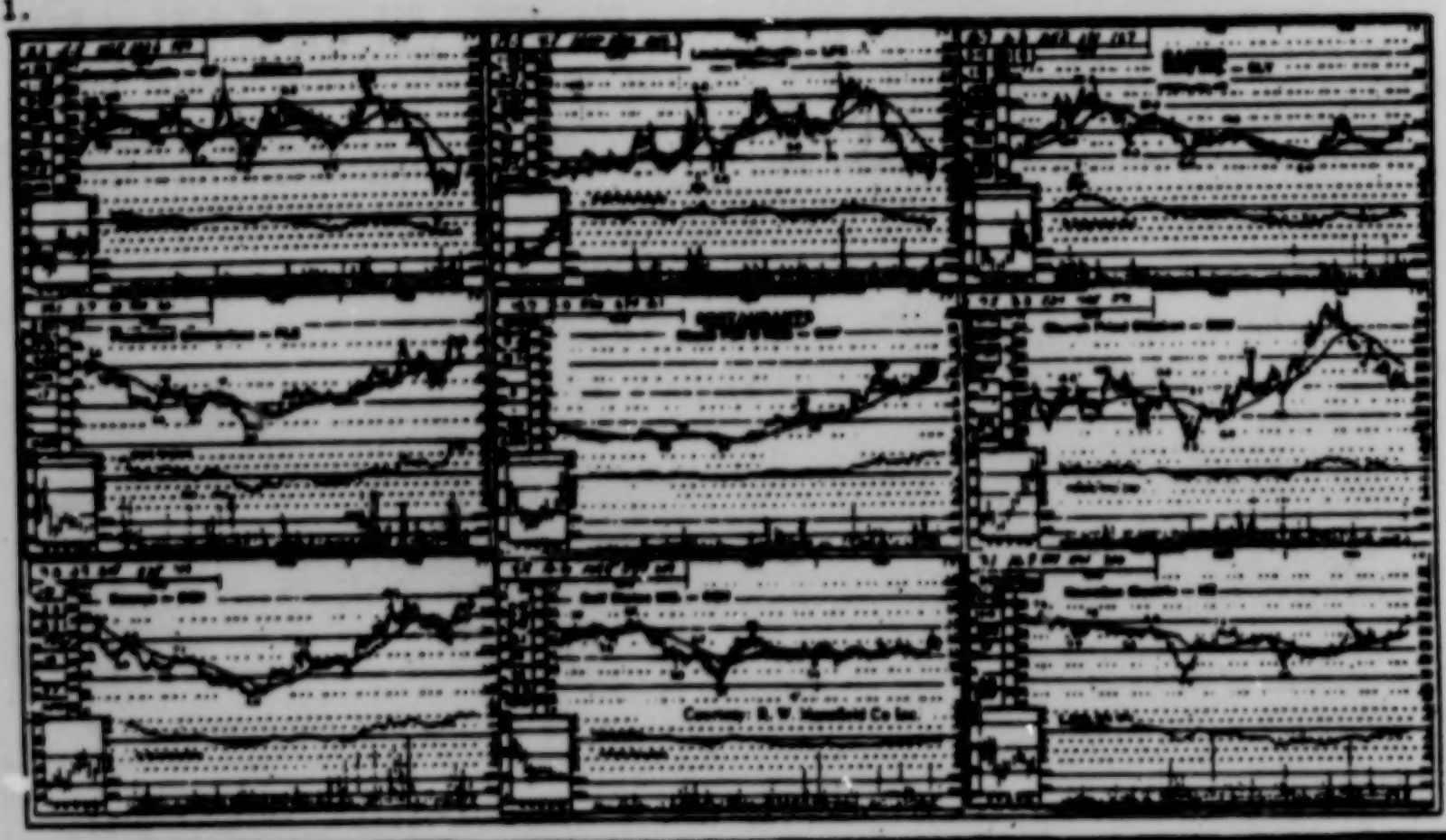
Boardroom--Continued

attractive yielding 3.1%. Stop: 10¼. Church's Fried Chicken (CHU-NYSE-25 3/4), then 27 5/8, rallied to a high of 37 3/8, but has since backed-off. We would avoid this issue at this time as it has topped-out, has poor relative strength and is below its moving average. Dennys (DEN-NYSE-30 3/8). Then at 21 5/8, DEN moved to 31 3/4 this past summer and now at 30 3/8 appears ready to challenge the high and move to higher ground. Good relative strength. Buy in the 30-31 area for a first target of 35. Stop: 25.
UTILITIES: With the decline of interest rates, some utility stocks offer excellent gain potential and yield (total return). One such is Gulf States Utilities (GSU-NYSE-12). Yield is a nice 12.2%, P/E only 6 and insiders are accumulating stock. Breakout above 13¼ would be a big plus and would signal a move toward the 17-20 area. Also attractive is Hawaiian Electric (HE-NYSE-26). HE just brokeout above heavy resistance at 26; a move above 27 would make this stock most attractive. Yield is nice 11%, P/E 7.1.



Precious Metals Corner/continued from page three

WHAT TO DO NOW: TRADERS: Have been out of gold mining shares since the last week of November 1980; stay on the sidelines as previously advised. INVESTORS: Sell all gold shares at this time as we foresee a disastrous further decline in all gold mining shares over the next three to six months. Silver-related investments should also be scaled back, the shares sold by traders and investors alike, and to prepare for the accumulation of silver bullion once a bottom has been reached.

Market Summary/Continued from page one

comfortable with that forecast. We are now leaning toward the view that the DJIA will move toward the 920 area and then explode above that moving as high as 1000. Should the market fail before 920 is reached, that will be the signal that the advance is over, and is one of our primary reasons for remaining cautious at this time.

Therefore, our strategy is to get into a 65-75% invested position in the strongest stocks (see the Boardroom section for our recommendations), buying them at current levels, or better yet, on reactions. Continue with 25-35% in cash, but be ready to commit additional funds to equities as this market shows additional strength. Once the current weakness is over, we think we'll see a very healthy advance, perhaps like January 1976. Switch fund traders should be 100% invested in aggressive funds at this time.

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December 1[illegible], 1981

PRECIOUS METALS CORNER

GOLD AND SILVER REVIEW

To bring our many new subscribers up to date, in our issue 26 November 1980 we advised subscribers: "...we are not advising the sale of gold bullion at this juncture. But, if gold fails to move above $645, or it clears $645 and fails at $660, we would say the chances of seeing $690 or a challenge of $720-850 in the future would not be very likely, and a drop to $560-570 or lower would be in the cards. For now, we are neutral to moderately bullish (on the intermediate term), but a move above $660 and $690 would change that. Before our next issue, if gold fails at one of these critical points ($660 or $690) we would close out positions at once."

Gold bullion did fail to better the high at $637.75 shortly thereafter and a trading sell signal was automatically flashed in accordance with our previous advice. Ever since then, we've advised subscribers to look for lower prices for the metal accompanied by bear market rallies.

Let's look at the longer-term outlook for gold bullion. This trend is down and has been since the top in January 1980 at $850. There have been bear market rallies but currently at $416.75 gold has lost about 51.5%. The U.S. inflation rate is declining and we don't look for any reversal of gold bullion for some time. In fact, the Consumer Price Index/Gold Bullion Indicator has just flashed a sell signal. However, we look for gold's bear market bottom within the first half of 1982, in the $250-320 range. Gold bullion's price moves within a six year cycle, with tops and bottoms coming six years apart (as does silver bullion). Bottoms have occurred in 1970 at $35, 1976 at $103.50, and the next bottom we're estimating in 1982 at $250-320. Tops have occurred in 1968 at $44, 1974 at $197.50, and 1980 at $850.

From the bottom in 1970 to the top in 1974, gold's price rose 466%, and from the bottom in 1976 to the top in 1980, rose 721%. From the ton in 1968 to the top in 1974, gold's price rose 350%, and from the 1974 top to the 1980 top, the increase was 329%. Using the average increase from bottom to top (593%), from the 1982 estimated bottom at $250-320 projects a top for 1986 at $1732-2218. Taking the average from top to top, (1968-74-80: 339.5%) projects the next top at $3738.

Likewise, from the 1970 bottom to the 1976 bottom, gold's price increased 196%. Projecting this out, the 1982 bottom would be $307, within our estimated $250-320 range. Of course, the wide parameters of $1732-3738 as a 1986 top is a wide spread, but it does give us some kind of an idea of the magnitude of gold's next bull market. While projecting out the future gold price in this manner might be simplistic, gold's price cycle has remained constant, and our longer-term gold charts show major support in the $250-320 area. Personally, we look for a top in the $2500 area. We believe there will be increased inflation, worldwide economic havoc, and greatly increased worldwide political turmoil;and in fact, even a world war or major war somewhere, (cycles also project a major war in 1983-86) which will be fuel in gold's price rise. With at least this much in mind, we can turn to the present and prepare for gold's bottom in order to take advantage of the opportunity just like in 1970 and 1976.

Turning to the intermediate and short terms outlook, gold first fell below $400 in July and then again in August. From a bottom at $391.25 in August, gold rallied to $463.50 in September and once again declined to $391 thus tracing out a head and shoulders top formation. A drop below $391.25 would break the neckline and would therefore project a low in the $360 area. However, gold's decline has been swift from $463.50 and a rally back to the $421 area (as we just experienced this past week) was in the cards, but a move above $450 is unlikely indeed. For now, only the very quick and nimble traders should trade gold,

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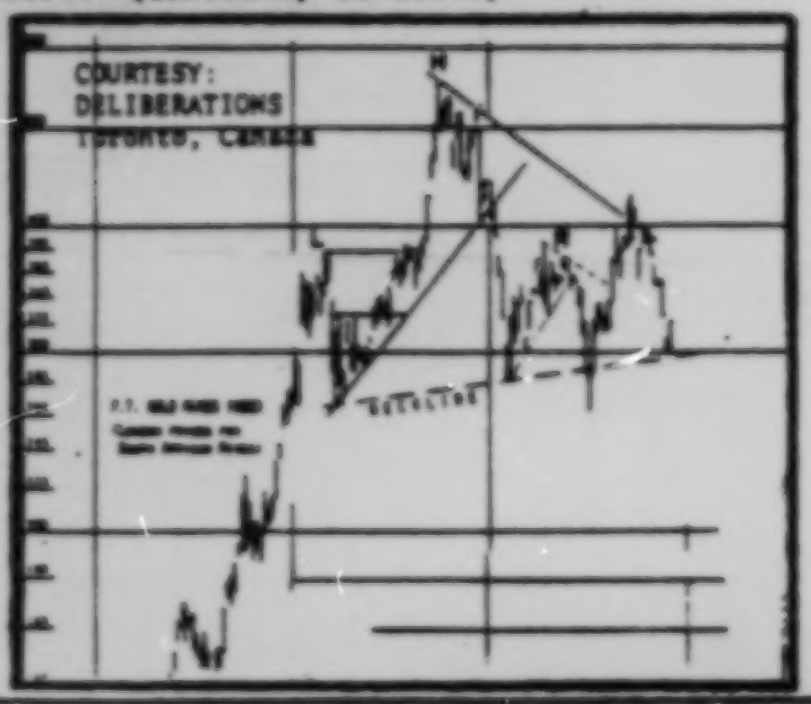
while most should just continue to sit on the sidelines until a bottom is reached.

GOLD MINING SHARES

MAJOR POLICY CHANGE: INVESTORS SELL ALL GOLD MINING SHARES

Again, for the benefit of our many new subscribers, in the early part of 1980 we advised subscribers that gold mining shares would outperform the metal. We advised the retention of gold mining shares, and indeed they did outperform the metal 1980 and most of 1981. In our issue of 26 November 1980, we advised the outright sale of gold shares for TRADERS as our research at that time showed that gold shares were in a top area. That proved most timely advice as all gold mining shares, domestic, North American and South African have collapsed since then. We advised long-term INVESTORS to hold their South African shares because the huge yields would act as a cushion on the downside, but strongly advised the sale of the domestic and North American shares, and a re-evaluation of long-term investors South African share portfolios. However, we are now making a major policy change and advise all investors and traders to SELL all gold mining shares, South African, domestic and North American. The reason for this action at this juncture is clear on the chart of the FT Gold Mining Index below: (Currently at 330.8)



The large head and shoulders top formation traced out in 1980 (left shoulder and head) and 1981 (right shoulder) is loud and clear: be prepared for a very nasty drop in gold mining share prices. In addition, another smaller head and shoulders formation has occurred over the past four months. Once the neckline is broken, a minimum decline to the 200 area on the chart is expected. We do not want you to experience this decline and bloodbath, in what could cost gold shares anywhere from 50-75% of their current price value. It would be better to sell out long-term insurance positions and pay the capital gains taxes than to go through a disastrous decline as the chart indicates. The decline could be even more severe (to the 160 area on the chart) so you can see our reasoning for the policy change at this time. Traders have been out since the last week in November 1980, and have avoided severe damage since then, now it's time for investors to sell and sit on the sidelines as well.

To sum up, there may be a period of strength in the shares over the next week or so which you can use to get out, however, we want you to plan on selling out all positions in gold shares in the very near future. This advice also applies to gold mutual funds, which funds should be switched to a money market fund or equity fund.

In the next few issues, we shall examine all gold shares in more detail as well as set up a few model portfolios for various amounts and review gold mutual funds and other gold-related investments so we'll be amply prepared to act when the time is right. That time will be at hand when no one wants gold-related investments, as at previous bottoms in 1970 and 1976.

SILVER

In 1976 and throughout 1977, we advocated a buying program for silver bullion in the $4-6 range. In December 1978 we said: "Silver is now on the springboard to all-time highs." In August 1979, just before silver exploded above the $10 mark, we said: "buy silver with both hands." In addition, in January and throughout 1978,

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